Supreme Court, U. S.
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JOINT APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-651

TEAMSTERS LOCAL UNION 657, *Petitioner*,
v.
JESSE RODRIGUEZ, MODESTO HERRERA, SADRACH G. PEREZ,
Respondents,

and

No. 75-715

SOUTHERN CONFERENCE OF TEAMSTERS, *Petitioner*,
v.
JESSE RODRIGUEZ, MODESTO HERRERA, SADRACH G. PEREZ,
Respondents,

and

No. 75-718

EAST TEXAS MOTOR FREIGHT SYSTEM, INC., *Petitioner*,
v.
JESSE RODRIGUEZ, MODESTO HERRERA, SADRACH G. PEREZ,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI IN NO. 75-651 FILED OCTOBER 24, 1975

PETITION FOR A WRIT OF CERTIORARI IN NO. 75-715 FILED NOVEMBER 13, 1975

PETITION FOR A WRIT OF CERTIORARI IN NO. 75-718 FILED NOVEMBER 14, 1975

CERTIORARI GRANTED MAY 24, 1976

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Date Proceedings

10-26-71— 1. Complaint, filed.

10-26-71— summons issued,

11-5-71 — 2. Summons (Shafer) re/ex 11-4-71 by Sifuentes, DUSM

11-9-71 — 3. Plaintiffs' Initial Request for Admissions, filed.

11-3-71 — 4. Summons (Johngon) re/ex 10-28-71 by Woodard, DUSM

11-3-71 — 5. Summons (Miller) re/ex 11-1-71 by Woodard, DUSM

11-11-71— 6. Motion of Defendant ETMF to Enlarge Time for Answer, filed.

11-16-71— 7. Order Enlarging Time, filed.

11-17-71— 8. Plaintiffs' Reply to Defendant's Motion to Enlarge Time, filed.

11-22-71— 9. Answer of Defendant Southern Conference of Teamsters, filed.

11-24-71—10. Answer of Local 657, filed.

12-14-71—11. Response of Defendant ETMF to Initial Request for Admissions, filed.

12-17-71—12. Answer of ETMF filed.

12-21-71—13. Order Preliminary to Pretrial Conference, filed.

12-28-71—14. Designation of Resident Attorney, filed.

2-10-72 —15. Plaintiff's First Set of Interrogatories, filed.

3-27-72 —16. ETMF Answers to Plaintiffs' First Set of Interrogatories, filed.

4-19-72 —17. ORDER Granting Extension of Time, filed.

4-18-72 —18. Joint Motion to Extend Time, filed.

9-15-72 —19. Interrogatories to Modesto Herrera, filed.

9-15-72 —20. Interrogatories to Perez, filed.

9-15-72 —21. Interrogatories to Rodriguez, filed.

9-19-72 —** Docket Call Discovery to be completed by Dec. 1972—Set for Non Jury Trial for January 29, 1973

9-27-72 —22. ORDER Setting time for discovery, date of trial, filed, also granting leave to amend to both parties

10-16-72—23. Answers to Interrogatories by Rodriguez, filed.

10-16-72—24. Answers to Interrogatories by Modesto Herrera, filed.

10-16-72—25. Answers to Interrogatories by Perez, filed.

11-1-72 —26. Motion by Plaintiffs to Transfer Venue, filed.

11-1-72 —27. Plaintiffs' Brief in Support of Motion to Transfer, filed.

11-6-72 —28. Opposition of Defendant East Tex Motor Freight to Motion to Transfer Venue, filed.

11-7-72 —29. Reply of Local 657 to Plaintiffs Motion to Transfer Venue, filed.

11-7-72 —30. Brief in Support of Local 657's Opposition, filed.

11-8-72 —31. Reply of Southern Conference of Teamsters to Motion to Transfer Venue, filed.

11-9-72 —32. Brief of Defendant ETMF in Support of Opposition to Motion to Transfer, filed.

11-17-72—33. ORDER Denying Motion for Transfer of Venue, filed.

11-20-72—34. Supplemental Brief, filed.

12-18-72—35. Amended Answer of Defendant Local 657, filed.

12-19-72—36. First Amended Answer of Defendant ETMF filed.

12-26-72—37. Plaintiff's Request for Admissions, filed.

1-3-73 —38. ORDER Extending Time, filed.

1-2-73 —39. Notice of Deposition of Willis, filed.

1-15-73 —40. Deposition of Modesto Herrera, filed.

1-23-73 —41. Depositions of Asbury and Bierle, filed.

1-23-73 —42. Deposition of Rodriguez, filed.

1-23-73 —43. Deposition of Perez, filed.

1-24-73 —44. Supplement to Memo of Defendant ETMF, filed.

1-19-73 —45. Supplement to Plaintiffs' List of Witnesses —Exhibit 10 to Proposed PreTrial Order, filed.

1-19-73 —46. Supplement to Plaintiffs' List of Exhibits— Exhibit 2 to Proposed PreTrial Order, filed.

1-26-73 —47. Depositions of Raymond C. Shafer, filed.

1-29-73 —** Non Jury Trial commenced—Brief opening statement made by Plaintiffs' attorney.

1-29-73 —Witnesses sworn and testimony for Plaintiffs began.

1-29-73 —All exhibits for Plaintiffs and Defendants admitted in evidence.

1-29-73 —Defendant ETMF Exhibits attached to Depositions and made part of record.

1-29-73 —Portions of Deposition of Harold Preston White read by Plaintiffs' attorney.

1-29-73 —Plaintiffs rest.

1-29-73 —Witnesses sworn and Defendants' testimony begun—Trial to resume tomorrow at 9:30.

1-29-73 —48. Plaintiffs' Proposed Pre Trial Order, filed.

1-29-73 —49. Proposed Pre Trial Order of Defendant East Texas Motor Freight, filed.

1-29-73 —50. Local Union 657's Proposed Pre Trial Order, filed.

1-29-73 —51. Defendant Southern Conference's Proposed Pre Trial Order, filed.

1-29-73 —52. List of Witnesses for Plaintiffs and for Defendants, filed.

1-29-73 —53. Subpoena (Thomas Salinas) re/ex by Plaintiff's attorney.

1-29-73 —54. Subpoena (Gomez) re/ex by Plaintiff's attorney.

1-30-73 —** Non Jury trial resumed—Additional witnesses sworn—Defendants testimony continue.

1-29-73 —Certain Stipulations read and made part of record—ETMF rests.

1-29-73 —So. Conf. of Teamsters and Local 657 rest.

1-29-73 —Rebuttal witness for Plaintiffs—Plaintiffs rest.

1-29-73 —Stipulation presented as Defendants' Exhibit FFFF.

1-29-73 —Briefs to be submitted by March 1, 1973—Case taken under advisement.

2-01-73 —55. Transcript of Proceedings at the end of the Trial Jan. 30, 1973, filed.

1-29-73 —56. Deposition of Cloer, filed.

1-29-73 —57. Depositions of White and Cloer, filed.

2-23-73 —58. Motion to Reopen Case for Receipt of Further Evidence, filed.

3-1-73 —59. Post Trial Brief of Defendant ETMF filed.

3-1-73 —Post Trial Brief of Defendants Intn'l. and So. Conf. of Teamsters & Teamsters Local 657, filed in 71-296, paper No. 52.

3-6-73 —60. Plaintiffs' Reply to Local 657's Motion to Reopen Case for Receipt of Further Evidence, filed. (Copy Judge)

3-8-73 —61. Reply Brief of Teamsters Local Union 657 to Post Trial Brief of Plaintiffs filed.

3-12-73 —62. Reply Brief of Defendant Unions, filed.

3-12-73 —63. Defendant East Texas Motor Freight's Post-Trial Reply Brief, filed.

3-12-73 —64. Plaintiffs' Post Trial Reply Brief, filed.

—65. Plaintiffs Post Trial Brief, filed.

3-20-73 —66. Stipulation, filed.

3-22-73 —67. Findings of Fact and Conclusions of Law, filed.

3-22-73 —68. Judgment, filed.

4-2-73 —69. Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law, filed.

4-6-73 —70. Order Granting Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law, filed.

4-9-73 —71. Plaintiffs Brief in Support of Motion to Amend Findings of Fact, filed.

5-3-73 —72. Notice of Appeal, filed.

5-3-73 —73. Cost Bond, filed.

5-21-73 —74. Transcript of Proceedings of Jan 29 & Jan 30, 1973, filed.

6-5-73 —75. Order Granting Extension of Time for Transmission of Record and Docketing A, filed.

6-1-73 —76. Motion to Extend Time for Transmission of Record, filed.

FOR THE WESTERN DISTRICT OF TEXAS
IN THE UNITED STATES DISTRICT COURT
SAN ANTONIO DIVISION

(Caption Omitted in Printing)

SA 71 CA 302

CIVIL ACTION No. 2A71

CA 302

Complaint

(Filed: October 26, 1971)

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(4) providing for a cause of action under 42 U.S.C. § 1981. This is a suit in equity authorized and instituted pursuant to § 2000e-5(f) of Title VII of the Act of Congress known as the "Civil Rights Act of 1964" (42 U.S.C. § 2000e et seq. hereinafter referred to the the "Act"). Jurisdiction of this Court is invoked pursuant to Title VII to secure the protection and redress the deprivation of rights secured by the Act providing for injunctive and other relief against racial and national origin discrimination in employment.

2. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of other Mexican-American and Black individuals who similarly have been denied equal employment opportunities by the defendants and additionally on behalf of Mexican-American and Black individuals who may, in the future, be denied equal employment opportunities by the defendants because of their national origin and race. These individuals who are similarly situated are persons who have been subjected to and who, in the future, may be subjected to the unlawful discriminatory practices, poli-

cies, customs and usages which have been instituted and/or maintained by the defendants as hereinafter more fully appears. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the plaintiffs are typical of the claims of the class and plaintiffs adequately protect the interests of the class so represented. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief, award of back wages, or corresponding declaratory relief with respect to the class as a whole.

3. This is a proceeding for a preliminary and permanent injunction restraining the defendants, East Texas Motor Freight, Southern Conference of Teamsters, and Teamsters Local 657 from maintaining practices, policies, customs or usages which discriminate against plaintiffs and members of their class because of their national origin and race with respect to equal employment treatment.

This is also a proceeding for a declaratory judgment, pursuant to 28 U.S.C. § 2201 and § 2202, that these practices, policies, customs or usages instituted and maintained by the defendants are violative of rights secured by Title VII and by 42 U.S.C. § 1981.

4. (a) Plaintiff Jesse Rodriguez is a Mexican-American citizen of the United States and a resident of the City of San Antonio in the State of Texas. Jesse Rodriguez has been employed by the defendant, East Texas Motor Freight, as an in-city driver from September 21, 1965 to present in San Antonio, Texas. Mr. Rodriguez is a member in good standing of Teamsters Local 657, the Southern Conference of Teamsters, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(b) Plaintiff Sadrach G. Perez is a Mexican-American citizen of the United States and a resident of the City

of San Antonio in the States of Texas. Sadrach G. Perez was employed by the defendant, East Texas Motor Freight, as an in-city driver from November 11, 1959 to the date of his discharge on or about May 18, 1971. Mr. Perez is a member in good standing of Teamsters Local 657, the Southern Conference of Teamsters and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(c) Plaintiff Modesto Herrera is a Mexican-American citizen of the United States and a resident of the City of San Antonio in the State of Texas. Modesto Herrera has been employed by the defendant, East Texas Motor Freight, as an in-city driver from September 1964 to present. Mr. Herrera is a member in good standing of Teamsters Local 657, the Southern Conference of Teamsters and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

5. (a) The defendant, East Texas Motor Freight, does business in the State of Texas and the City of San Antonio, and is an employer within the meaning of 42 U.S.C. § 2000e(b) in that it is engaged in an industry affecting commerce and employs more than twenty-five (25) persons. This defendant is also an employer within the meaning of 42 U.S.C. § 1981.

(b) The defendant, Southern Conference of Teamsters, is a labor organization within the meaning of 42 U.S.C. 2000e-(d) and (e) in that it is engaged in an industry affecting commerce and has more than twenty-five (25) members. Additionally, the Southern Conference of Teamsters is a regional organization of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and serves as the collective bargaining agent for the Teamsters Locals within its jurisdiction, including defendant Teamsters Local 657.

(c) The defendant, Teamsters Union Local 657 of the International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America, is a labor organization within the meaning of 42 U.S.C. § 2000e(d) and (e) in that it is engaged in an industry affecting commerce and has more than twenty-five (25) members and, additionally, it serves as the local collective bargaining agent for the plaintiffs.

6. Prior and subsequent to July 2, 1965, the defendant, East Texas Motor Freight, has intentionally engaged in the following practices, policies, customs and usages made unlawful by Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq. and 42 U.S.C. § 1981) which have denied plaintiffs and members of their class equal employment opportunities because of their national origin and race, to wit:

(a) The defendant maintains a policy and practice of excluding its Mexican-American and Black city-driver employees from line driver or over-the-road job assignments throughout its system of business operation. Since the line driver positions are the higher paying driver positions with the defendant, the effect of this policy is to relegate the Mexican-American and Black city-driver employees and applicants to the lower paying jobs;

(b) The defendant maintains a policy of not allowing its in-city drivers to transfer to line driver positions without loss of accumulated company seniority for purposes of job bidding and layoff rights. The effect of such policy is to perpetuate the company's past and continuing practice of excluding otherwise qualified Mexican-American and Black in-city drivers from obtaining line driver positions;

(c) On information and belief, plaintiffs allege that the no-transfer of seniority policy mentioned in Paragraph 6(b) above is the product of certain sections of the collective bargaining agreement entered into by the defendant and the Southern Conference of Teamsters. In the alterna-

tive, plaintiffs allege that the defendant has entered into separate collective bargaining agreements with the Southern Conference of Teamsters, one for city drivers and another for road drivers, that have perpetuated the unfair employment practices mentioned in Paragraph 6(b) above;

(d) Plaintiffs further allege that the defendant has excluded Mexican-American and Black applicants for employment as line drivers as illustrated by the fact that while defendant has approximately 415 line drivers, they are exclusively Anglo;

(e) That defendant, by action of its San Antonio Terminal Manager, discriminated against and discharged plaintiff Sadrach G. Perez for the reason that Mr. Perez had filed a charge with the Equal Employment Opportunity Commission, such conduct being an express violation of 42 U.S.C. § 2000e-3;

(f) That defendant, by action of its San Antonio Terminal Manager, has been discriminating against and harassing plaintiff Jesse Rodriguez for the reason that Mr. Rodriguez had filed a charge with the Equal Employment Opportunity Commission, such conduct being an express violation of 42 U.S.C. § 2000e-3;

(g) That on numerous occasions the plaintiffs and members of the class have made verbal and written requests to be transferred to line driver positions to no avail; and

(h) That by its conduct described in Paragraph 6(a)-(f), the defendant has relegated its Mexican-American and Black in-city drivers to the lower paying driver positions with the company causing the plaintiffs and the class monetary loss and emotional stress.

7. Prior and subsequent to July 2, 1965, the defendant, Southern Conference of Teamsters, has intentionally engaged in the following practices, policies, customs and

usages made unlawful by Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) and 42 U.S.C. § 1981 which have denied plaintiffs and members of their class equal employment opportunities because of their national origin and race, to wit:

(a) On information and belief, the Southern Conference of Teamsters have initiated, maintained and perpetuated separate collective bargaining agreements for its line driver members and in-city driver members. The effect of these separate collective bargaining agreements has been to perpetuate the exclusion of Mexican-American and Black in-city drivers from transferring to line driver positions;

(b) That the separate collective bargaining agreements described in Paragraph 7(a) above have effectively resulted in the maintenance by the defendant of dual lines of seniority in its representation of the employees of East Texas Motor Freight with the attendant effect of totally excluding Mexican-American and Black employees and applicants from line driver positions; and

(c) The defendant's acceptance of and acquiescence in the discriminatory conduct engaged in by East Texas Motor Freight described in Paragraph 6 above has caused plaintiffs and members of their class monetary loss and emotional stress.

8. Prior and subsequent to July 2, 1965, the defendant, Teamsters Local 657, has intentionally engaged in the following practices, policies, customs and usages made unlawful by Title VII of the 1964 Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) and 42 U.S.C. § 1981 which have denied plaintiffs and members of their class equal employment opportunities because of their national origin and race, to wit:

(a) That defendant's, Teamsters Local 657, acceptance of and acquiescence in the discriminatory conduct engaged in by East Texas Motor Freight and the Southern Conference of Teamsters, described in Paragraphs 6 and 7 above, despite numerous requests for assistance by plaintiffs and members of their class, constitutes a denial to plaintiffs and their class of equal employment opportunities; and

(b) That defendant's inclusion in the Local Freight Forwarding, Pickup and Delivery Supplemental Agreement entered into by East Texas Motor Freight and the Southern Conference of Teamsters pertaining to in-city drivers indicates defendant's intentional participation in the discriminatory policies and practices described in Paragraphs 6 and 7 above.

9. That prior and subsequent to July 2, 1965 all three parties defendant have intentionally acted in concert to create and maintain a system-wide exclusion of Mexican-American and Black persons from line driver positions at East Texas Motor Freight.

10. (a) On or about August 20, 1970, plaintiff Jesse Rodriguez filed a written charge under oath with the United States Equal Employment Opportunity Commission (hereinafter referred to as the EEOC) complaining of the practices described in Paragraphs 6(a)-(d) and 8 above, alleging that such practices constituted a continuing violation of the Act. On or about June 9, 1971, Jesse Rodriguez filed an amended charge with the EEOC complaining of the practice described in Paragraph 7 above.

On or about July 27, 1971, Jesse Rodriguez filed a second charge under oath with the EEOC alleging discrimination and harassment against him by the defendant, East Texas Motor Freight, based upon the fact that he had filed a previous charge with the EEOC, such charge constituting the basis for the allegations contained in Paragraph 6(f) above.

On or about October 6, 1971, Jesse Rodriguez sent a letter to the EEOC requesting that he be issued his thirty day "right-to-sue" letter for both charges. This letter was received by plaintiff on October 11, 1971, and the instant action has been timely filed.

(b) On or about February 26, 1971, plaintiff Sadrach G. Perez filed a written charge under oath with the EEOC complaining of the practices described in Paragraphs 6(a)-(d) and 8 above, alleging that such practices constituted a continuing violation of the Act. On or about June 7, 1971 Sadrach G. Perez filed an amended charge with the EEOC complaining of the practices described in Paragraph 7 above.

On or about June 7, 1971 Sadrach G. Perez filed a second charge under oath with the EEOC alleging that the defendant, East Texas Motor Freight, had discharged him on May 18, 1971, in retaliation for his filing of discrimination charges with the EEOC, such charge constituting the basis for the allegations contained in Paragraph 6(e) above.

On or about October 6, 1971, Sadrach G. Perez sent a letter to the EEOC requesting that he be issued his thirty day "right-to-sue" letter for both charges. This letter was received by plaintiff on October 13, 1971, by counsel, and the instant action has been timely filed.

(c) On or about March 11, 1971, plaintiff Modesto Herrera filed a written charge under oath with the EEOC complaining of the practices described in Paragraph 6(a)-(d) and 8 above, alleging that such practices constituted a continuing violation of the Act. On or about June 9, 1971, Modesto Herrera filed an amended charge with the EEOC complaining of the practices alleged in Paragraph 7 above.

On or about October 6, 1971, Modesto Herrera sent a letter to the EEOC requesting that he be issued his thirty day "right-to-sue" letter for this charge. This letter was

received by plaintiff on October 11, 1971 and the instant action has been timely filed.

(d) Neither the City of San Antonio nor the State of Texas have equal employment opportunity commissions which are to be deferred to pursuant to 42 U.S.C. § 2000e-5(b).

(e) All conditions precedent to the initiation of this suit under Title VII and 42 U.S.C. § 1981 have been complied with.

11. Plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury by the practices, policies, customs and usages of the defendants complained of herein until the same are enjoined by this Court. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction and declaratory judgment is their only means of securing adequate relief.

WHEREFORE, plaintiffs pray that this Court advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

12. Declare that this action is properly maintainable as a class action under the appropriate provisions of Rule 23 of the Federal Rules of Civil Procedure. Concurrently, that the appropriate class should consist of all defendants, East Texas Motor Freight's Mexican-American and Black in-city drivers included in the collective bargaining agreement entered into between East Texas Motor Freight and the Southern Conference of Teamsters covering the State of Texas. Additionally that such class should properly be composed of all Mexican-American and Black applicants for line driver positions with East Texas Motor Freight included in the above area covered by the Southern Conference of Teamsters from July 2, 1965 to present.

13. Grant plaintiffs a preliminary and permanent injunction enjoining the defendants and their agents, successors, employees, and those actively in concert with them and at their direction from continuing to maintain practices, policies, customs or usages which discriminate against plaintiffs and members of their class because of their race and national origin with respect to equal employment opportunity, and more specifically, to order East Texas Motor Freight, Southern Conference of Teamsters and Teamsters Local 657 to immediately initiate the following preliminary affirmative action pending final disposition of this suit:

(a) To immediately reinstate plaintiff, Sadrach G. Perez, to his former position of in-city driver;

(b) To enjoin East Texas Motor Freight, the Southern Conference of Teamsters and Teamsters Local 657, their agents, officers, and employees from engaging in any form of harassment, intimidation, and coercion of the named plaintiffs and members of their class because of plaintiffs' actions in filing charges with the Equal Employment Opportunity Commission and, additionally, their action in filing the instant complaint;

(c) To enjoin East Texas Motor Freight from continuing its present policy of requiring an in-city driver to resign from his in-city position and suffer loss of his accumulated company seniority for line driver job bidding and layoff purposes if an in-city driver chooses to transfer to a line driver position. Concurrently to enjoin the defendants, Southern Conference of Teamsters and Teamsters Local 657, from preventing East Texas Motor Freight's efforts to suspend the operation of the loss-of-seniority policy, if such policy is preliminarily enjoined by this Court;

(d) To affirmatively require East Texas Motor Freight to publicize the pendency of the instant suit at all of East Texas Motor Freight's line driver and in-city terminals located in the State of Texas by specifically doing the following:

(1) Posting notices in conspicuous locations at each such East Texas Motor Freight Terminal, such notice describing the nature of the instant suit and informing defendant's Mexican-American and Black in-city drivers of their right to transfer to line driver positions without loss of seniority, such form of notice to be approved by the Court; and

(2) Additionally to inform defendant's Mexican-American and Black in-city drivers of their right to participate in the instant suit by submitting a form, to be approved by the Court, and sent to the United States District Clerk's Office for the Western District of Texas, San Antonio Division, such form to be made available by East Texas Motor Freight and distributed to all of its Mexican-American and Black in-city drivers.

(e) To affirmatively require East Texas Motor Freight to hire Mexican-American and Black individuals for line driver openings at all of its line driver terminals at a ratio of one Mexican-American or Black for each Anglo so hired; these Mexican-American and Black line driver new hires should initially be chosen from East Texas Motor Freight's Mexican-American and Black in-city drivers who request such transfer, specifically the named plaintiffs and secondly from the list of Mexican-American and Black applicants on file at all of East Texas Motor Freight's terminals and offices;

(f) To affirmatively require that East Texas Motor Freight post in conspicuous places a list of all line driver openings at each of its in-city and line driver terminals, such list to be up-dated every fifteen (15) days;

(g) To enjoin East Texas Motor Freight from destroying any line driver applications presently in its custody submitted by Mexican-American and Black in-city drivers and applicants;

(h) To affirmatively require East Texas Motor Freight to merge its line driver and city driver seniority lists so as to provide for a singular seniority system based solely upon an employee's anniversary date with the company. Furthermore, to enjoin the defendants, Southern Conference of Teamsters and Teamsters Local 657, from engaging in any conduct that would hinder East Texas Motor Freight's efforts to effect the above-mentioned merger of seniority lists.

14. Grant plaintiffs and members of their class, upon final disposition of this cause, a permanent injunction enjoining East Texas Motor Freight, the Southern Conference of Teamsters and Teamsters Local 657 from continuing the policies and practices heretofore described in Paragraphs 6, 7 and 8 above and, furthermore, to affirmatively require defendant to permanently implement those aspects of preliminary relief requested in Paragraph 13 above.

15. Grant the plaintiffs and members of their class a declaratory judgment that the practices, policies, customs and usages complained of herein are violative of rights protected by Title VII and 42 U.S.C. § 1981.

16. Grant the plaintiffs and each member of the class plaintiffs represent all wages lost as a result of the practices, policies, customs and usages maintained by the defendants.

17. Grant the plaintiffs and members of their class their costs herein including reasonable attorneys' fees and grant such further, additional or alternative relief as may appear to the Court to be equitable and just.

18. Grant the plaintiffs and members of their class an award of punitive damages, to be severally shared by all defendants, in the amount of $100,000.00 for the purposeful conduct of defendants in subjecting plaintiffs and their class to the humiliation and emotional stress attend-

ant to defendants' discriminatory practices and policies and, furthermore, for the willful and intentional harassment of the plaintiffs solely because of their action in filing charges of discrimination against defendants with the United States Equal Employment Opportunity Commission.

19. Plaintiffs further pray that this Court maintain continuing jurisdiction of this matter to insure continued compliance by the defendants with any final Order entered in this cause.

Respectfully submitted,

/s/ Jim Heidelberg
MARIO OBLEDO
ED IDAR, JR.
JOHN SERNA
JIM HEIDELBERG

MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
319 Aztec Building
211 E. Commerce
San Antonio, Texas 78205
Attorneys for Plaintiffs

• • • •

NOTE: Portion of Record Omitted, Filed In Its Original Form.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. SA-71-302

(Caption Omitted in Printing)

Answer of Defendant
Southern Conference of Teamsters

FIRST DEFENSE

The complaint fails to state a claim against this defendant upon which relief can be granted.

SECOND DEFENSE

Plaintiffs lack standing to maintain a class action. Plaintiffs fail properly to define the class which they purport to represent.

THIRD DEFENSE

Plaintiffs did not file timely charges with the Equal Employment Opportunity Commission.

FOURTH DEFENSE

The Equal Employment Opportunity Commission has not rendered its decision as to whether there was reasonable cause to believe the Civil Rights Act might have been violated by this defendant.

FIFTH DEFENSE

The Equal Employment Opportunity Commission has not completed efforts to attempt in any way to conciliate the instant dispute.

SIXTH DEFENSE

The suit is untimely filed.

SEVENTH DEFENSE

Plaintiffs may not raise issues not brought before the Equal Employment Opportunity Commission.

EIGHTH DEFENSE

1. This defendant admits the jurisdiction of the Court as set out in paragraph 1 of the complaint, admits paragraphs 3, 5(a), 5(b) [except the last sentence thereof], 5(c) and 10(d) of the complaint.

2. Defendant denies the allegations of paragraphs 2, 6, including the subdivisions thereof, 7, including the subdivisions thereof, 8, including the subdivisions thereof, 9, 10, including the subdivisions thereof, and 11 of the complaint.

Respectfully submitted,

MULLINAX, WELLS, MAUZY & BAAB, INC.
1601 National Bankers Life Bldg.
Dallas, Texas 75201—741-4656

/s/ By L. N. D. WELLS, JR.
L. N. D. Wells, Jr.

Attorneys for Defendant,
Southern Conference of Teamsters

(Certificate of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. SA-71-CA-302

(Caption Omitted in Printing)

Amended Answer of Defendant
Local Union 657

FIRST DEFENSE

1. The complaint fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

2. Plaintiffs' complaint should be dismissed for failure to join necessary and indispensable parties.

THIRD DEFENSE

3. The complaint against Local 657 under 42 U.S.C. 1981 is barred pursuant to 28 U.S.C. 1652 and 42 U.S.C. 1988, by applicable statutes of limitation and laches.

FOURTH DEFENSE

4. The complaint against Local 657 under 42 U.S.C. 2000(e) is untimely filed.

FIFTH DEFENSE

5. Plaintiffs did not timely file charges with the Equal Employment Opportunity Commission.

SIXTH DEFENSE

6. Plaintiffs did not file charges against Local 657 with the Equal Employment Opportunity Commission.

SEVENTH DEFENSE

7. The Equal Employment Opportunity Commission has not rendered its decision as to whether there was reasonable cause to believe the Civil Rights Act might have been violated.

EIGHTH DEFENSE

8. The Equal Employment Opportunity Commission has not attempted in any way to conciliate, nor completed efforts to conciliate the instant dispute.

NINTH DEFENSE

9. Plaintiffs may not raise issues in this Court not brought before the Equal Employment Opportunity Commission.

TENTH DEFENSE

10. This Defendant has no right or authority to determine the provisions of collective bargaining agreements with employers, except as authorized and approved by its members. None of Plaintiffs have ever requested or authorized negotiation of contractual rights to transfer to or bid on road driver jobs with company seniority outside the representation jurisdiction of Local 657. All contracts between Local Union 657 and East Texas Motor Freight have been approved and ratified prior to the signing thereof by Defendant. Plaintiffs, therefore, have waived and are estopped to claim any relief as against this Defendant by reason of the no-transfer rule or operational effects of separate contracts for road and city drivers.

ELEVENTH DEFENSE

11. No collective bargaining agreement between this Defendant and East Texas Motor Freight has ever precluded Plaintiffs' employment as road drivers, or their transfer to road driver jobs with company seniority.

Twelfth Defense

12. The National Labor Relations Act, 29 U.S.C., Section 159(a), restricts this Defendant to the representation of employees who have designated it as their bargaining representative. This act further restricts the scope of this representation authority to job classification at East Texas Motor Freight terminals within this Defendant's representation jurisdiction. East Texas Motor Freight has never had road driver jobs at any of its terminals within the representation jurisdiction of this Defendant.

Thirteenth Defense

13. This Defendant has never been a party to a collective bargaining agreement with East Texas Motor Freight covering road driver jobs.

Fourteenth Defense

14. The hiring practices of East Texas Motor Freight are matters over which this Defendant is restricted, as a matter of law, in regulating, or attempting to regulate, by reason of the prohibitions of the National Labor Relations Act, 29 U.S.C., Section 164(b), and the Texas Right To Work Law, Article 5207A, Revised Civil Statutes of Texas.

Fifteenth Defense

15. The majority of the employees who make up the collective bargaining unit, of which Plaintiffs are a part, are Mexican-Americans and Negroes. This bargaining unit sets all policies and demands of Defendant Local 657 relative to their working conditions or contractual rights as employees. No member of this bargaining unit, including the Plaintiffs, has ever raised any issue of racial discrimination by this Defendant. Nor has any member of the bargaining unit ever moved for action by this Defendant to change the policies and practices of East Texas Motor Freight of which Plaintiffs complain. Accordingly, these Plaintiffs are

now estopped to complain that this Defendant has "accepted" and "acquiesced" in alleged discriminatory policies and practices of East Texas Motor Freight.

Sixteenth Defense

16. This case cannot be maintained as a class action against this Defendant for the following reasons:

(a) The Claims of the Plaintiffs to road driver jobs are not typical of the claims of the class they seek to represent.

(b) Plaintiffs cannot fairly represent the class because the relief sought conflicts with existing legal rights of other members of the class.

(c) There has been no conduct or actions by this Defendant which are applicable to a class consisting of all Negro and Mexican-American city drivers in Texas. This Defendant has never had representation jurisdiction of the entire class, and all of its actions and conduct, relative to road driver jobs, has been limited to employees within its representation jurisdiction. Accordingly, Plaintiffs' complaint does not meet the requirements of Rule 23(b)(2), Federal Rules of Civil Procedure.

(d) Plaintiffs, being all residents of San Antonio and all members of this Local Union, do not constitute a representative group for the purpose of maintaining a class action for the entire State of Texas.

(e) The geographical scope of Plaintiffs' class which includes the entire State of Texas is too large for the maintenance of this action under Rule 23.

Seventeenth Defense

17. The discharge of the Plaintiff Sadrach Perez by East Texas Motor Freight, and this Defendant's representation of Perez in such matter, have already been the

subject of an arbitration proceeding and a complaint filed with the National Labor Relations Board, both of which resulted in rulings adverse to Plaintiff Perez.

Any alleged harassment of the Plaintiff Jesse Rodriguez by East Texas Motor Freight, brought to the attention of this Defendant, has been protested by it.

Eighteenth Defense

18. This Defendant is neither an indispensable or necessary party to Plaintiffs' claims for employment rights outside the geographical and representation jurisdictions of this Defendant, and should be dismissed as to such claims.

Nineteenth Defense

19. This Defendant has not discriminated against Plaintiffs because of their race, color or national origin.

Twentieth Defense

20. This Defendant admits the allegations as to the jurisdiction of the Court as set out in the first and second sentences of paragraph 1 of the complaint. As to the remaining allegations contained in paragraph 1, to the extent they are conclusions of law, their validity is denied; to the extent they are statements of fact, they are denied.

21. This Defendant admits the allegations of paragraphs 3, 5(a), 5(b) except the last sentence thereof which is denied, 5(c) and 10(d) of the complaint.

22. This Defendant admits the allegations of paragraph 4 of the complaint, except those allegations as to dates of employment which are denied, and the second sentence of paragraph 4(b), which is also denied.

23. This Defendant denies the allegations of paragraphs 2; 6 including subdivisions (a) thru (h) thereof; 7 including the subdivisions (a) thru (c) thereof; 8 including subdivisions (a) and (b) thereof; 9; 10 including subdivisions (a)(b)(c) and (e) thereof; and 11 of the complaint.

Respectfully submitted,

Edward W. Penshorn
Bradford F. Miller
519 Majestic Building
San Antonio, Texas 78205

/s/ Edward W. Penshorn
Of Counsel

(Certificate of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION No. SA-71-302

(Caption Omitted in Printing)

Answer

East Texas Motor Freight, one of the Defendants in the above-entitled action, for answer to the Complaint herein says:

1. Answering paragraph 1 of the Complaint, the Defendant denies the allegations in this paragraph insofar as they state conclusions of law, *i.e.*, that the court has jurisdiction over this Complaint pursuant to either 28 U.S.C. § 1343(4), 42 U.S.C. § 1981 or 42 U.S.C. § 2000e *et seq.*

2. Answering paragraph 2 of the Complaint, the Defendant denies the allegations of fact and conclusions of law in this paragraph.

3. Answering paragraph 3, subparagraph 1, of the Complaint, the Defendant admits that this is a proceeding for a preliminary and permanent injunction. However, the Defendant denies the allegations of fact and conclusions of law in the remainder of the subparagraph.

4. Answering the second subparagraph of paragraph 3 of the Complaint, the Defendant denies the conclusions of law and allegations of fact contained in the paragraph.

5. Answering subparagraph (a) of paragraph 4 of the Complaint, the Defendant admits the second sentence in the subparagraph, but has insufficient knowledge or information to form a belief as to the truth of the first and third sentences in the paragraph. Additionally, the Defendant

would note that the individual Plaintiff is denominated as "Jesus" Rodriguez on the Defendant's employment records.

6. Answering subparagraph 4(b) of the Complaint the Defendant admits the second sentence in the subparagraph but has insufficient knowledge or information to form a belief concerning the truth of the first and third sentences in the subparagraph.

7. Answering subparagraph 4(c) the Defendant admits the second sentence in the subparagraph except that the individual Plaintiff became a full-time employee of East Texas Motor Freight on May 3, 1965. The Defendant is without sufficient knowledge or information to form a belief as to the truth of the first and third sentences in subparagraph 4(c).

8. Answering subparagraph 5(a) of the Complaint, the Defendant admits the first sentence in the subparagraph but denies the allegations in the second sentence of the subparagraph.

9. Answering subparagraph 5(b) of the Complaint, the Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations in the subparagraph.

10. Answering subparagraph 5(c) of the Complaint, the Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations in the subparagraph.

11. Answering the prefatory subparagraph of paragraph 6 of the Complaint, the Defendant denies the allegations in the prefatory subparagraph.

12. Answering subparagraph 6(a) of the Complaint, the Defendant denies the allegations in the subparagraph.

13. Answering subparagraph 6(b) the Defendant admits the allegations in the first sentence of the subpara-

graph except that Defendant's policy is not to permit transfer under any circumstances but denies the allegations in the second sentence of subparagraph.

14. Answering subparagraph 6(c) of the Complaint, the Defendant denies the allegations of the subparagraph except that it admits that it is a party to separate collective bargaining agreements for in-city and road drivers.

15. Answering subparagraph 6(d) of the Complaint, the Defendant denies the allegations in the subparagraph except that it admits that it employs approximately 824 line (road) drivers.

16. Answering subparagraph 6(e) of the Complaint, the Defendant denies the allegations in the subparagraph except that it admits that it discharged Plaintiff Sadrach G. Perez on May 18, 1971.

17. Answering subparagraph 6(f) of the Complaint, the Defendant denies the allegations in the subparagraph.

18. Answering subparagraph 6(g) of the Complaint, the Defendant denies the allegations in the subparagraph except that Company records indicate that on or about August 21, 1970, the individual plaintiffs submitted letters to the Defendant's terminal manager at the San Antonio terminal applying for road or line driver jobs.

19. Answering subparagraph 6(h) of the Complaint, the Defendant denies the allegations in the subparagraph.

20. Answering paragraph 7 of the Complaint, the Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations in the paragraph.

21. Answering paragraph 8 of the Complaint, the Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations in paragraph 8.

22. Answering paragraph 9 of the Complaint, the Defendant denies the allegation in the paragraph.

23. Answering the allegations in paragraph 10(a) of the Complaint, the Defendant is without sufficient knowledge or information to form a belief with respect to the truth of the allegations in paragraph 10(a) of the Complaint except that the Defendant denies the last sentence in the third subparagraph of paragraph 10(a) insofar as that sentence constitutes a conclusion of law.

24. Answering subparagraph 10(b) of the Complaint, the Defendant is without sufficient knowledge or information to form a belief with respect to the truth of subparagraph 10(b) of the Complaint, except that with respect to the last sentence of the third paragraph of subparagraph 10(b) the Defendant denies the allegations in that sentence insofar as they constitute conclusions of law.

25. Answering subparagraph 10(c) of the Complaint, the Defendant is without sufficient information or belief to answer the allegations in the subparagraph except that with respect to the second sentence in the second paragraph of the subparagraph, the Defendant denies the allegations in the sentence insofar as they constitute a conclusion of law.

26. Answering subparagraph 10(d) of the Complaint, the Defendants admits the allegations in subparagraph 10(d).

27. Answering subparagraph 10(c) of the Complaint, the Defendant is without sufficient information or knowledge to form a belief with respect to the truth of the allegations in this paragraph, except that it denies the allegations in subparagraph insofar as they constitute a conclusion of law.

28. Answering paragraph 11 of the Complaint Defendant denies the allegations in paragraph 11.

DEFENSES

1. For a first, separate and distinct defense, arising upon the face of the Complaint herein, Defendant says that the facts alleged in said Complaint are insufficient to state a claim upon which relief can be granted.

2. For a separate and distinct defense arising from the face of the Complaint, the Defendant says that the Plaintiffs do not have standing to maintain a class action.

3. As a separate and distinct defense, the Defendant says that it appears on the Complaint herein that the Defendant has failed to join persons needed for a just adjudication of this Complaint. Rule 19, Federal Rules of Civil Procedure.

The joinder of those persons presently classified by the Defendant Company as over-the-road drivers is needed because they are so situated that the disposition of the action in their absence may, as a practical matter, impair or impede their ability to protect their seniority interests with the Defendant Company.

4. As a separate and distinct defense, the Defendant says that the court is without subject matter jurisdiction, because the Complaint alleges allegations of discrimination that were not related to the facts alleged in the charge filed with the EEOC.

5. For a separate and distinct defense, the Defendant says that the court is without subject matter jurisdiction. The Complainants have failed to satisfy the jurisdictional prerequisites for commencing an action under 42 U.S.C. § 2000e-5(f) because they failed to file a charge with the Equal Employment Opportunity Commission within 90 days of the alleged discriminatory occurrence.

6. For a separate and distinct defense, Defendant says that the Complaint fails to state a cause of action under 42 U.S.C. § 1981.

7. This Defendant has in no way violated the Civil Rights Act of 1964.

8. This Defendant has in no way discriminated against Plaintiffs or any of Plaintiffs.

WHEREFORE, this Defendant prays that Plaintiffs take nothing and that it go hence with its costs without day.

MORGAN, LEWIS & BOCKIUS
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

CLEMENS, KNIGHT, WEISS & SPENCER
1805 N. B. C. Building
San Antonio, Texas 78205

/s/ By: THEO. F. WEISS
Theo. F. Weiss

Attorneys for Defendant
East Texas Motor Freight

(Certificate of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

(Caption Omitted in Printing)

CIVIL ACTION No. SA 71 CA 302

First Amended Answer of Defendant East Texas Motor Freight

EAST TEXAS MOTOR FREIGHT, one of the Defendants in the above entitled action, pursuant to leave of court duly had, files this its First Amended Answer in lieu of its answer heretofore filed herin, respectfully showing to the court:

1. This Defendant denies the allegations of Paragraph 1 of the Complaint insofar as they state conclusions of law, i.e., that the court has jurisdiction over this Complaint pursuant to 28 USC Section 1343(4), 42 USC 1981 or 42 USC Section 2000(e), et seq.

2. This Defendant denies the allegations in Paragraph 2 of the Complaint which apparently seeks to allege a class action under Rule 23, denying not only such allegations, but denying that this is a case within Rule 23.

3. Answering Paragraph 3, Subparagraph 1 of the Complaint this Defendant admits that Plaintiffs seek injunctive relief, but denies that Plaintiffs are entitled to same and denies the allegations of fact and conclusions of law in such subparagraph.

Answering Paragraph 3, Subparagraph 2 of the Complaint, this Defendant admits that Plaintiffs seek a declaratory judgment, but denies that Plaintiffs are entitled to any such relief and further denies that any practices, policies, customs or usages instituted or maintained by Defendant are violative of rights secured by Title VII or by 42 USC Section 1981.

4(a). Answering Paragraph 4(a) of the Complaint, this Defendant admits that Plaintiff Jesse Rodriguez (who is denominated in Defendant's personnel records "Jesus" Rodriguez) is a resident of San Antonio, Texas, is employed by Defendant in San Antonio, Texas and has been so employed since September, 1965, but Defendant lacks sufficient knowledge or information to admit or deny the remainder of the allegations of such paragraph.

4(b). Answering Paragraph 4(b) of the Complaint, this Defendant admits that Plaintiff Sadrach G. Perez is a resident of San Antonio, Texas and that he was employed by this Defendant from November 11, 1959 until he was discharged on or about May 18, 1971, but lacks sufficient knowledge or information to admit or deny the remainder of the allegations of such paragraph.

4(c). Answering Paragraph 4(c) of the Complaint, this Defendant admits that Plaintiff Modesto Herrera is a resident of San Antonio, Texas, has been employed as a full-time employee of this Defendant since May 3, 1965 and is presently employed by this Defendant, but lacks sufficient knowledge or information to admit or deny the remainder of the allegations of such paragraph.

5(a). Answering Paragraph 5(a) of the Complaint, this Defendant admits it is an employer within the meaning of 42 USC Section 2000(e)(b), is engaged in an industry affecting commerce and employs more than 25 persons. This Defendant denies that it is an employer within the meaning of 42 USC Section 1981.

5(b). Answering Paragraph 5(b) of the Complaint, this Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations of such paragraph.

5(c). Answering Paragraph 5(c) of the Complaint, this Defendant is without sufficient knowledge or informa-

tion to form a belief concerning the truth of the allegations in such paragraph.

6. This defendant denies the first unnumbered subparagraph of Paragraph 6 of the Complaint.

6(a). This Defendant denies the allegations of Paragraph 6(a) of the Complaint.

6(b). This Defendant denies the allegations of Paragraph 6(b) except to admit that it does have a policy of not allowing in-city drivers to transfer to line driver positions without loss of accumulated company seniority for the purpose of job bidding and layoff rights, which policy is applicable to all drivers without regard to race, color, sex, religion or national origin.

6(c). This Defendant denies the allegations of Paragraph 6(c) of the Complaint except that it admits that it is a party to separate collective bargaining agreements for in-city and road drivers.

6(d). This Defendant denies the allegations of Paragraph 6(d) of the Complaint except that it admits that it employs approximately 824 line (road) drivers.

6(e). This Defendant denies the allegations of Paragraph 6(e) of the Complaint, stating, however, that Plaintiff Sadrach G. Perez was discharged for proper cause on May 18, 1971.

6(f). This Defendant denies the allegations of Paragraph 6(f) of the Complaint.

6(g). This Defendant denies the allegations of Paragraph 6(g) of the Complaint, except that company records at San Antonio, Texas indicate that in August, 1970, the Plaintiffs submitted letters to the Defendant's terminal manager at the San Antonio terminal applying for road or line driver jobs.

6(h). This Defendant denies the allegations of Paragraph 6(h) of the Complaint.

7. This Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations of Paragraph 7 of the Complaint.

8. This Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations concerning Paragraph 8 of the Complaint.

9. This Defendant denies the allegations of Paragraph 9 of the Complaint.

10(a). This Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations of Paragraph 10(a) of the Complaint. This Defendant denies the conclusions of law embodied in such paragraph.

10(b). This Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations of Paragraph 10(b) of the Complaint. This Defendant denies the conclusions of law embodied in such paragraph.

10(c). This Defendant is without sufficient knowledge or information to form a belief concerning the truth of the allegations of Paragraph 10(c) of the Complaint. This Defendant denies the conclusions of law embodied in such paragraph.

10(d). This Defendant admits that neither the City of San Antonio nor the State of Texas has equal employment opportunity commissions.

10(e). This Defendant is without sufficient information or knowledge to form a belief with respect to the truth of the allegations in Paragraph 10(e) of the Complaint. The conclusions of law embodied therein are denied.

11. This Defendant denies the allegations of Paragraph 11 of the Complaint.

12. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 12 of the Complaint.

13. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 13 of the Complaint.

14. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 14 of the Complaint.

15. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 15 of the Complaint.

16. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 16 of the Complaint.

17. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 17 of the Complaint.

18. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 18 of the Complaint.

19. This Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 18 of the Complaint.

DEFENSES

(Each defense alleged below is a separate and distinct defense)

1st Defense

The facts alleged in the Complaint are insufficient to state a claim upon which relief can be granted.

2nd Defense

Plaintiffs do not have standing to maintain a class action.

3rd Defense

This is not a class action within the meaning of Rule 23.

4th Defense

Plaintiffs have failed to join persons needed for a just adjudication of this action and required to be joined by Rule 19, Federal Rules of Civil Procedure. The joinder of those persons presently classified by this Defendant as over-the-road drivers is needed because they are so situated that the disposition of the action in their absence may impair or impede their ability to protect their seniority and other interests with this Defendant.

5th Defense

This court is without subject matter jurisdiction because the Complaint contains allegations which were not related to the facts alleged in the charge filed with the EEOC.

6th Defense

Plaintiffs have failed to satisfy the jurisdictional prerequisites for commencing an action under 42 USC Section 2000(e)-5(f) because they failed to file a charge with the Equal Employment Opportunity Commission within 90 days of the alleged discriminatory occurrence.

7th Defense

The Complaint fails to state a cause of action under 42 USC Section 1981.

8th Defense

This Defendant has in no way violated the Civil Rights Act of 1964 or such Civil Rights Act as amended and has not violated any civil rights act.

9th Defense

This Defendant has in no way violated 42 USC Section 1981.

10th Defense

The Court lacks subject matter jurisdiction under 42 USC Section 1981 insofar as the Complaint alleges discrimination on the basis of national origin.

11th Defense

This Defendant has in no way discriminated against Plaintiffs or any of Plaintiffs because of their race or national origin or in any other way.

12th Defense

In the contracts between this Defendant and the Unions, this Defendant and the Unions agree not to discriminate against any individual because of such individual's race, color, religion, sex or national origin and that employees shall not be limited, segregated or classified in any way to deprive an individual employee of employment opportunities because of race, color, religion, sex or national origin. If the discrimination alleged by the Plaintiffs had occurred, it would have furnished the basis for a grievance under the grievance and arbitration provisions of such Union contracts. No grievance has been filed by the Plaintiffs or any of them or by any Union on the ground that he or they have been discriminated against because of race; therefore, Plaintiffs have not exhausted their remedies provided for in said contracts and this court should defer to such grievance and arbitration provisions and dismiss this action.

13th Defense

Plaintiffs Sadrach G. Perez and Local Union 657, acting for him, duly presented a grievance in connection with his discharge by this Defendant and such grievance was carried to arbitration under the terms of the Union contract, and carried to a final and binding resolution under the terms of said contract. The joint Board set up under the

contract to arbitrate such matters, after hearing such grievance, denied same; thus, in effect, holding that said Plaintiff had been discharged for proper cause by this Defendant. Having invoked such contractual remedy, Plaintiff Sadrach G. Perez is bound by such decision and award and such decision and award is res judicata as to the said Plaintiff and as to the alleged rights and remedies sought to be asserted herein.

14th Defense

If there had been any discrimination because of race as alleged in Plaintiffs' Complaint, which this Defendant denies, such discrimination would constitute an unfair labor practice and the National Labor Relations Board has sole, exclusive and pre-emptive jurisdiction thereof and this court lacks jurisdiction of this case. The superior and pre-emptive right of the National Labor Relations Board to decide the issues sought to be raised by Plaintiffs herein are hereby pleaded and asserted.

15th Defense

Plaintiff Sadrach G. Perez did in fact file a charge with the Regional Director of the National Labor Relations Board against the International Brotherhood of Teamsters alleging a violation in failing to properly represent him in connection with the grievance and arbitration in connection with his discharge. Said charge is No. 23-CB-1205. The Regional Director, after carefully investigating and considering such charge advised such Plaintiff that there was insufficient evidence of such violation and that no complaint would issue. Thereafter, said Plaintiff appealed from such decision of the Regional Director to the General Counsel of the National Labor Relations Board who denied said Plaintiff's appeal. Said Plaintiff, therefore, is estopped from proceeding in the instant action by virtue of his election to utilize the remedies afforded by the National Labor Relations Act.

16th Defense

This Defendant avers that the purported remedy sought in the Complaint is in direct conflict with and in violation of Section 703(j) of Title VII of the Civil Rights Act of 1964, 42 USC 2000(e)-2(j) in effect at the date of any alleged violation thereof and as amended.

17th Defense

In the alternative, this Defendant alleges that Plaintiffs' claims, if any, are barred by Section 706(g) of the 1972 Act, the bar, as well as all of the remedies and protection afforded thereby, are hereby expressly pleaded.

18th Defense

In the alternative, this Defendant pleads the Texas two-year Statute of Limitations (Article 5526, Texas Revised Civil Statutes), the bar of which is hereby invoked and asserted.

19th Defense

Again in the alternative, this Defendant alleges the bar of any other applicable statute of limitations or similar provision barring stale claims.

20th Defense

Further in the alternative, this Defendant avers that Plaintiffs' claims and the monetary damages prayed for are barred and precluded by laches, the doctrine of laches being especially invoked as a bar.

21st Defense

Plaintiffs and each of them had an opportunity to and did in fact vote in favor of the acceptance of the collective bargaining agreements of which they now complain. By such affirmative action and conduct, Plaintiffs and each

of them have ratified the collective bargaining agreements, such ratification amounting to an accord and satisfaction as to the claims now sought to be asserted. Having accepted the benefits and fruits of such contracts, Plaintiffs are now estopped and precluded from questioning the provisions thereof.

22nd Defense

Plaintiffs and each of them do not have, and have not possessed, the reasonable requirements and qualifications established by this Defendant for over-the-road drivers.

23rd Defense

The seniority provisions and classifications in the collective bargaining agreements to which this Defendant is and has been a party, are based upon reasonable business necessity and, therefore, do not constitute a violation of the Civil Rights Act.

WHEREFORE, this Defendant prays that Plaintiffs take nothing and that it go hence with its costs without day.

RICHARD C. HOTVEDT
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Washington, D.C. 20036
/s/ Harry A. Rissetto

MORGAN, LEWIS & BOCKIUS
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/s/ Theo. F. Weiss
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Of Counsel

Attorneys for Defendant
East Texas Motor Freight

(Certificate of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

(Caption Omitted in Printing)

CIVIL ACTION No. SA-71-CA-302

Motion To Reopen Case for Receipt of Further Evidence

The Defendant, Local Union 657, moves the Court to reopen this case, which was tried before the Court and which the Court presently has under advisement, for the purpose of receiving further evidence.

This Motion is made under the authority of Rule 59, Federal Rules of Civil Procedure, and the cases which have construed such rule as authorizing the Court to grant this Motion.

The evidence which Defendant Local Union 657 requests be admitted into the record is the attached affidavit of R. C. Shafer and George Hardeman, Jr. (Exh. A), and extracts from the minutes of a meeting (Exh. B). These intruments relate to action that was taken at a special Union Membership Meeting on February 11, 1973, after the trial of this case was completed. In this meeting, the employees of the defendant freight line, and others, voted down a proposal that the next city and road driver contracts be merged, and both job classifications be permitted to transfer to the other with company seniority. The majority of the employees attending this meeting were Mexican-Americans and Negroes who work as City Pick-Up and Delivery Drivers.

The facts set out in the attached affidavit are highly material to the main defense of Defendant Local Union 657 in this case. They are offered for the purpose of showing that the majority of the Mexican-American and Negro

members of this Defendant oppose one contract for city and road drivers with area-wide seniority and the right to transfer between job classifications and terminals. These facts are also offered to further show that this Defendant has acted in the only manner possible under all applicable law pertaining to its duties as a collective bargaining representative.

Respectfully submitted,

BRADFORD F. MILLER
EDWARD W. PENSHORN
519 Majestic Building
San Antonio, Texas 78205
Attorneys for Defendant
Local Union 657

/s/ By: Edward W. Penshorn
Of Counsel

(Certificate of Service Omitted in Printing)

AFFIDAVIT

STATE OF TEXAS)
COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, personally appeared R. C. Shafer and George Hardeman, Jr., who after being by me duly sworn, upon their oaths depose and state as follows:

I, R. C. Shafer, am the President and Business Manager of Teamsters Local Union 657, located at 5626 Monterey Street, San Antonio, Texas. I am, by national origin, part Indian and part Anglo.

I, George Hardeman, Jr., am the Recording Secretary of Teamsters Local Union 657, 5626 Monterey Street, San Antonio, Texas. I am, by national origin, a Negro.

We were both present at a special called meeting on February 11, 1973 of all employees, represented by Teamsters Local Union 657, who work for common carrier truck lines under the current National Master Freight Agreement and its Southern Conference, Road, City, Clerical and Garage Supplemental Agreements. This meeting was held at the Union Hall at 5626 Monterey Street, San Antonio, Texas. It started at 11:15 A.M. and ended at 2:15 P.M.

No one was permitted to be present at this meeting and participate in it except employees of freight lines who work under the above mentioned collective bargaining agreements. A record was made of the employees who attended by having those present sign a roster. This roster shows that the racial and national origin of those in attendance was broken down as follows:

Mexican-Americans	*Negroes*	*Anglos*
83	13	42

Of the total 138 people in attendance, 121 of them were city pick-up and delivery drivers who work under the

National Master Freight Agreement and its Southern Conference Pickup and Delivery Agreement known as the city contract.

On June 30, 1973, the current collective bargaining agreements involved in this case between the truck lines and the Teamsters Union will expire. The By-Laws of this Union state that whenever a collective bargaining agreement is about to be negotiated that a meeting will be called of the members so that they can determine and authorize the bargaining demands to be made of the employer. The purpose of this meeting was for the affected employees to advise Local Union 657 what wages, hours and working conditions they want the Union to try to negotiate for them in their next collective bargaining agreement with their employers.

The purpose of the meeting was explained to the members present by R. C. Shafer immediately after it was called to order. A Motion was then made, seconded and passed without a dissenting vote that Local Union 657 give a power of attorney to the negotiating committee of the International Brotherhood of Teamsters authorizing it to negotiate the new collective bargaining agreements with the freight line employers.

Thomas Salinas, who is a city driver for Roadway Express, Inc. in San Antonio, Texas and who was a witness for the plaintiffs in this Court in the case of Jesse Rodriguez, et al, v. East Texas Motor Freight, et al, Civil Action No. SA-71-CA-302, made a proposal that the city driver and road driver contracts be merged into one contract with system-wide seniority throughout the Southern Conference of Teamsters, and that city drivers be allowed to transfer to the road and road drivers allowed to transfer to the city.

After discussion on the above proposal was completed, a standing vote of those for and against it was taken so

that an accurate count could be made. Mr. Thomas Salinas, Mr. Jesse Uriquizo and Mr. D. C. Fuller counted the votes. The result was 21 for the proposal and 87 against it. If all possible Anglo votes were deducted from the total against it, the proposal would still have been rejected by a majority of just the Mexican-American and Negro votes.

A second proposal was made by Mr. J. B. Hicks to the effect that all employees, in all job classifications, be allowed ninety (90) days in which to indicate their desire to transfer to another job classification. This proposal included a request that when job openings become available the employer fill them by selecting from those employees who had indicated a desire to change jobs, on the basis of seniority. Those employees making a change would have thirty (30) days in which to qualify or voluntarily return to their old jobs with their old job seniority. After the thirty (30) day period, if an employee remained in the new job he would have his company seniority for all purposes, but would lose all seniority in his old job and all right to return to it. After considerable discussion, this proposal was defeated by a vote of 39 for the proposal to 72 against it.

A third proposal was made to the meeting by Mr. Tony Perez to the effect that the seniority of the employees working for the freight lines remain as it is in the current contracts. This proposal was approved by a vote of 69 for the proposal to 25 against it.

About two hours of the total meeting time was spent in discussion of the above three proposals by those present. The minutes of the meeting which deal with these proposals are attached to this affidavit.

Signed this ——— day of February, 1973.

R. C. Shafer
George Hardeman, Jr.

(Subscription Omitted in Printing)

TEAMSTERS LOCAL UNION 657
SAN ANTONIO, TEXAS 78237
MINUTES—SPECIAL MEETING
FREIGHT LINE EMPLOYEES
FEBRUARY 11, 1973

Thomas Salinas—Roadway Express—City: I propose that serious consideration be given to implementing Articles 37 and 38 in the contract on equal employment opportunities for minorities.

R. C. Shafer: I think you are going to have to state how you want this done so the committee can act on it.

Thomas Salinas: I do not know how to do it, but I want Articles 37 and 38 lived up to.

R. C. Shafer: This is not a specific proposal. Can you state what you want done.

Thomas Salinas: I want a man from the city to be able to go on the road and vice-versa.

R. C. Shafer: If there are no road driver jobs here this would have to be on a system-wide basis.

Thomas Salinas: We are denying people the right to go on the road.

R. C. Shafer: Will you state what it is you want in the contract.

Thomas Salinas: I want equal opportunity for better paying jobs. I don't know how to do it. The attorneys should be able to do it.

R. C. Shafer: I think you need system-wide seniority to do what you want.

Thomas Salinas: Then I want system-wide seniority.

R. C. Shafer: Do you want to merge all contracts into one?

Thomas Salinas: I had rather have it just on a state wide basis.

R. C. Shafer: Some companies do not have road drivers in the state.

Thomas Salinas: System wide seniority in the Southern Conference is what I want.

Joe Eaton: Is every man here prepared to move 5 or 6 times a year to another terminal? You would have to uproot your family every time.

R. C. Shafer: Joe, don't argue with Tom. Just talk to the members.

Ethel Stanzell—Braswell—Office: If there is an opening for a line driver it could be posted and the city driver could bid on it and take his seniority.

Modesto Herrera: At Southern-Pacific when a person was laid off, he had the option of staying here and working as casual, or bumping into another terminal.

J. B. Hicks, Lee Way Motor Freight—City: I think that anyone that wants to go on the road should be given 90 days to sign a list, and then have 30 days to qualify or decide if he wants to stay, and after that he would lose all his city seniority.

R. C. Shafer: J. B., this is a different proposal. Will you hold it until later after we have finished talking about Tom's?

Jesse Rodriguez: When you are laid off it is usually only for two or three months. You do not have to move.

Jesse Urquizo—Lee Way Motor Freight—City: I do not want to go on the road myself.

D. C. Fuller—East Texas Motor Freight—Office: I have been a road driver, a city driver and a clerk. I think we

should keep it on a local basis and keep our terminal seniority.

Ray Burrow—East Texas Motor Freight—Mechanic: I have been a mechanic for twenty-five years. Some companies have a rule that you must have 5 years experience to be a mechanic. I don't want to be told I am laid off here on Friday and have to try to bump into Memphis, Tennessee the next Monday morning.

Guadalupe Martinez: Do we have system wide seniority on the East and West Coasts?

R. C. Shafer: No. On the West Coast they have terminal seniority.

Frank Morales, Roadway Express—City: I think system-wide seniority would work.

Thomas Salinas: I notice we got some comments from the office and mechanics. They should be left out.

N. G. Albert: Can this be worked out on a company level?

R. C. Shafer: The freight lines negotiate as groups with the Union through a committee.

Is there any further discussion? If not, we will take a standing vote so we can be sure to get a correct count. Will Tom Salinas, D. C. Fuller and Jesse Urquizo count the votes and then compare their counts.

The proposal is that all contracts with the freight lines be merged into one contract with the right to transfer between jobs with system-wide seniority throughout the Southern Conference.

A standing vote was then taken with 87 voting against the proposal and 21 for it.

J. B. Hicks: I make a proposal that anyone that wants to go on the road to give him a trial basis of three months to see if he likes it.

R. C. Shafer: I don't understand your proposal.—Is this it—That a list be posted on the bulletin board by the companies and the people be given 90 days to sign showing that they want to transfer, and then they be given a probationary period to qualify.

J. B. Hicks: Yes, give them only 90 days to make up their minds. Then if they transfer they lose all their city seniority, but keep them company seniority.

Frank Washington—East Texas Motor Freight—City: Within the company we could file an application that if a road job came open then the company would hire from within the company with seniority. This would apply to all people—clerks, mechanics, everyone.

R. C. Shafer: Allright. J. B. has made a motion that the companies post a notice on the bulletin board for 90 days giving all employees a chance to sign showing they want to transfer to another job. Then when an opening occurs the company will fill the job from the list on the basis of seniority. Then the employee would have 30 days to qualify or return to his old job. If he stays on the new job he would have his company seniority for everything but would lose all his seniority in his old job. Is this right, J. B.?

Herbert Ott—Lee Way Motor Freight—Garage: This would apply only to present employees.

R. C. Shafer: The motion is that the list would only be up for 90 days. Is there anyone else that wants to talk on the Motion?

Modesto Herrera: I suggest one contract for just the city and the road drivers.

R. C. Shafer: The proposal includes everyone. It is to apply throughout the Southern Conference.

Frank Morales: Merchants put their jobs up for bid once a year.

Joe Eaton: What if road drivers transfer into San Antonio with a lot of seniority and then there is a layoff?

R. C. Shafer: Is there anyone else that wants to talk?

The chairman then restated the proposal to be voted on.

Ethel Stangell: What if a road driver bumps in here and I lose my job. I can't go out on the dock and handle freight.

Gene Katara—Lee Way Motor Freight—City: This cuts out casuals.

R. C. Shafer: Is there any further discussion? If not, we will take a vote.

A standing vote was then taken with the count being made the same way as the previous proposal.

The vote was 72 against the proposal and 39 for it.

Tony Perez—Roadway Express—City: I make a motion that we keep our present seniority as it is.

Frank Washington: I want the Company to post openings and give the Company people 30 days to apply and take their company seniority with them. Also, they should be given 30 days to come back to their old jobs.

Jesse Rodriguez: If we vote down all the proposals we don't solve the problem.

Thomas Salinas: There are a lot of lawyers in the Southern Conference. They should be able to figure this out.

Joe De Luna—Roadway Express—City: All proposals are being shot down.

Thomas Salinas: What if this proposal denies equal rights to Mexican-Americans?

R. C. Shafer: The big majority of the people here today are Mexican-Americans and Negroes. Everyone has a right to vote the way he wants to vote.

Is there any further discussion on the Motion to keep the seniority in all contracts the way it is now?

There being no further discussion a standing vote was again taken of those for and against the Motion.

The vote was 69 for the Motion and 25 against it.

Present at the meeting were 121 city drivers, 5 road drivers, 7 office employees and 5 garage employees.

I hereby certify that the above is a true and correct copy of that portion of the minutes dealing with proposals on a single contract, transfer between jobs and seniority made on February 11, 1973 at a special meeting of employees working for various motor freight lines called for the purpose of getting their requests for their new contract with their employers.

Signed this ——— day of February, 1973.

George Hardeman, Jr.
Recording Secretary
Teamsters Local Union 657

In the United States District Court
For the Western District of Texas
San Antonio Division

Civil Action No. SA-71-CA-302

Jesse Rodriguez, et al.
v.
East Texas Motor Freight, et al.

Findings of Facts and Conclusions of Law

On the 29 day of January, 1973, came on to be heard the above entitled and numbered cause for trial on the merits, and both parties appeared in person and by their Attorneys of Record and announced ready for trial, whereupon the Court proceeded to hear the evidence from the witnesses and oral arguments of counsel and at the conclusion of the trial and after consideration of all the pleadings, the evidence adduced by both parties, the arguments of counsel and applicable law, the Court hereby makes it Findings of Fact and Conclusions of Law.

Findings of Fact

1. This Court has jurisdiction of this action by virtue of Title 42, U.S.C., Section 2000e-5(f) and Title 28, U.S.C., Section 1343 (4) providing a cause of action under Title 42, U.S.C., Section 1981.

2. The plaintiffs are employees of the defendant truck line and members of the defendant Union and its affiliates (Local 657 of the Southern Conference of Teamsters and the International Conference of Teamsters), with the exception of the plaintiff, Jesse Rodriguez, who is no longer an employee of the defendant truck line. Plaintiffs are all Mexican-American residents of the United States and residents of San Antonio, Bexar County, Texas. The defendant truck line is a corporation doing business in the State of Texas and the City of San Antonio and operates and main-

tains a local city-wide freight terminal and a city-wide trucking service in San Antonio, Bexar County, Texas and is an employer within the meaning of Title 42, U.S.C., Section 2000 e-(b). The defendant Union and its affiliates are the representatives and bargaining agents of the plaintiff employees on an international, regional and local basis.

3. All plaintiffs were hired by the defendant truck line as regular city pick-up and delivery drivers on the dates set out herein and have remained in that capacity to the present time.

Jesse Rodriguez	-	Sept., 1965
Modesto Herrera	-	May, 1965
Sadrach Perez	-	May, 1959

4. It is stipulated that none of the plaintiff employees were discriminated against as to their original employment.

5. Except for one road driver employed by the Valley Copperstate Sunset Lines, who was transferred from San Antonio, Texas immediately after the merger in 1970 with East Texas Motor Freight, the defendant truck line has never had any road drivers domiciled in San Antonio, Bexar County, Texas and the San Antonio terminal is operated solely as a local, city-wide pick-up and delivery service.

6. It is stipulated that prior to and subsequent to the effective date of Title VII of the 1964 Civil Rights Act to the date that Jesse Rodriguez filed a charge of discrimination with the Equal Employment Opportunity Commission (E.E.O.C.) the defendant truck line had never employed a Negro or Mexican-American as a line driver in the State of Texas covered by the Southern Conference Area Supplemental Agreement.

7. It is stipulated that except for having been received and filed locally by the Terminal Manager Sager in August

1970, the defendant truck line has never considered the written applications for employment as road drivers of the plaintiffs. Such applications were transmitted to the Dallas corporate office of the defendant truck line subsequent to the filing of the E.E.O.C. charges involved herein.

8. It is stipulated that the claim of discrimination of the plaintiffs is solely based upon the fact that after their original employment they have been "locked in" to the lower paying job of city driver and have been denied a job as road driver because:

(a) of the maintenance of separate seniority rosters for city and road drivers;

(b) of the fact that any city driver, regardless of his race, if he transferred from city driver classification to a road driver classification, loses his accumulated city seniority;

(c) the defendant truck line discouraged inquiries from the plaintiffs concerning the qualifications and/or availability of road driver jobs;

(d) the defendant truck line had always employed Anglo/white applicants as road drivers; and

(e) the defendant truck line's policy and practice has been based to a great extent on a word of mouth system. Since the defendant truck line's road drivers and supervisory and terminal personnel are almost exclusively Anglo/white, such a practice has continued the alleged illegal exclusion of Mexican-Americans and Negroes as road drivers.

9. It is further stipulated that the only issue presently before the Court pertaining to the defendant truck line is whether or not its failure to consider the plaintiffs' road driver applications constituted a violation of Title VII and 42 U.S.C., Section 1981.

10. On April 1, 1970 the defendant truck line and the defendant Union entered into the National Master Freight Agreement and Southern Conference Area Local Freight Forwarding Pick-up and Delivery Supplemental Agreement (hereinafter referred to as "Union Contract") which expires June 30, 1973 and the terms and conditions of which are fully known and understood by the plaintiff employees. The plaintiff employees have ratified this contract and prior similar contracts since the time of their employment, with the exception of Jesse Rodriguez who voted against ratification of the current contract solely because of the strike and lock-out by the Chicago bargaining unit in the Spring of 1970 and not due to any contract clause made the subject of this suit.

1. The provisions of the Union Contract providing for job transfer from a city driver to a road driver and vice versa, including the provision for separate seniority lists for city and line drivers, apply to all job applicants and employees regardless of race or qualifications, and are not in any way discriminatory.

12. The defendant truck line's policy and regulations regarding job transfers are generally:

(a) The applicant must relinquish his current position;

(b) The applicant must make written application for a new position at terminal location where the job is sought;

(c) The applicant must be willing to re-locate at the new terminal location;

(d) For a road driver job, applicants must pass certain standardized Department of Transportation tests and company tests (driving and physical); and

(e) The applicants must have certain road driving experience.

These regulations are not unreasonable and apply to all job applicants and employees regardless of race or qualifications. It is stipulated that the standards and qualifications of the defendant truck line for its road drivers are not discriminatory. The fact that each terminal is autonomous as concerns the employment of drivers is proper and in accordance with accepted business practices.

13. The plaintiff employees testified that they were unwilling or at least ambivalent to comply with the job transfer requirements even when confronted with a hypothetical opportunity to make the job change under the existing regulations "tomorrow" assuming a position was available. Thus, plaintiffs' objections are not grounded on lack of job availability, but rather on the stringency of the regulations.

14. There has been no showing of discrimination as regards the hiring practices of the San Antonio Terminal office of the defendant truck line.

15. The plaintiff employees have never filed a discrimination grievance charging a violation under Article 38 of the Union Contract, but originally filed a Complaint with the Equal Employment Opportunity Commission.

16. The plaintiff employees have never availed themselves of participating in the contract amendment negotiation meetings at the local Union level in an effort to change the job transfer requirements.

17. The plaintiff employees have not been discriminated against by their Union. The Union is comprised of a majority of Mexican-Americans and Negroes and every member is free to participate in the contract negotiating process and to vote on every issue or contract presented to the membership.

18. When the plaintiff employees inquired from various supervisory personnel at the San Antonio Terminal as to the method of securing a road driving position, they were not discouraged nor misled, but rather the requirements were explained (i.e. they would have to make application at the road driving terminal location, etc.). The failure of the plaintiff employees to secure a road driving position was due to an unwillingness to give up their city driving seniority and inability to meet the job qualifications rather than actual racial discrimination by either the defendant truck line or the defendant Union.

19. In January, 1972, the company made the following modification in its no-transfer policy: during a period of 30 days at any terminal where line drivers were domiciled, a city driver could make application for transfer to a line driver's job. He would be given the necessary tests and if he qualified, as a road driver job opened up or became available, he would be permitted to take the job. In effect, the requirement of three years immediate prior line haul road experience was temporarily waived as to such city drivers.

In the area covered by the Southern Conference of Teamsters, there were 202 applications by city drivers. Some of them failed to qualify or to pass the required tests. Some qualified, but did not like over-the-road driving and voluntarily went back to city driving. In the end, only five city drivers successfully made the transition or transfer to over-the-road drivers' jobs. All five of these worked out of the Memphis, Tennessee terminal.

20. The plaintiff, Jesse Rodriguez, continues in his employment with the defendant truck line as a city driver. His driving and work record includes numerous accidents (at least three) and at least five injuries.

21. The plaintiff, Modesto Herrera, continues in his employment with the defendant truck line as a city driver.

His driving and work record includes at least three accidents, at least seven injuries, much time off because of injuries, and at least four warning letters, three of which involved abnormally low productivity.

22. The plaintiff, Sadrach G. Perez, was employed by the defendant truck line as a city driver until his discharge for cause on May 18, 1971. His driving and work record included the following:

(1) On January 18, 1966 he claimed to have been totally and permanently disabled in an accident in which he hurt his back stacking boxes. In June of 1966 he filed suit in the District Court of Bexar County, Texas, appealing from an award of the Industrial Accident Board and alleging that he was "totally and permanently incapacitated". On July 27, 1966 this suit was voluntarily dismissed. There was no settlement with or payment by ETMF's compensation carrier.

(2) On October 22, 1970 Sadrach G. Perez was given a warning letter by the then terminal manager for violating instructions and a long-standing policy of the terminal.

(3) On January 28, 1971 Perez was dispatched with a shipment to Lackland Air Force Base. The shipment included 471 pieces, totaling 5,133 lbs., with most of the pieces weighing around 11 lbs. and no piece weighing more than 25 lbs.

He complained to the Assistant Terminal Manager Ezra Beierle that the truck in which the merchandise was loaded did not have a lift gate and wanted to unload the merchandise onto a truck that did have a lift gate. Beierle refused, telling him to proceed with the delivery.

Perez then went to the office of Terminal Manager Asbury and demanded that the truck be

unloaded and the merchandise loaded onto one having a lift gate. The argument consumed about 20 minutes. Asbury told him to proceed with the delivery. Perez left with the statement, "I've been too good too long." He proceeded to Lackland where he took a total of five hours to deliver 5,133 lbs. at one location.

He was given a written reprimand and warning because of the incident.

(4) A few days later, he filed a Workmen's Compensation claim asserting that on the Lackland delivery on January 28, 1971 he injured his left shoulder and upper back and neck.

(5) On January 29, 1971 he was given a written warning notice because of partial absences from work on January 26, 27 and 28.

(6) On March 26, 1971 he was given a warning notice because of his failure to make a delivery on March 24, 1971 at Solo Serve, the warning notice citing other instances in February, 1971 of poor production by him.

(7) On March 26, 1971 he was given a warning notice in connection with a delivery at Sonney Plumbing and Air Conditioning Company. He had unloaded the merchandise on the ground. When the lady in charge, Mrs. Mary Fewell, asked him to please place it on the dock, he refused, claiming that the stacking of the merchandise on the ground completed the delivery. Mrs. Fewell wrote a letter to the company protesting the fact that Perez was disrespectful and discourteous to her.

(8) On May 18, 1971 Perez was dispatched with a load of drugs to the Scobey Warehouse. The

boxes had been segregated by numbers in the trailer at the point of origin (Chicago). The instructions to Perez were that he was to load them on pallets at the Scobey Warehouse according to the instructions.

Perez became involved in an argument with the Scobey supervisor about how the pallets were to be delivered to him. Assistant Manager Beierle made a trip to Scobey's to attempt to solve the problems which Perez had created.

Terminal Manager Asbury and Beierle made another trip to Scobey's attempting to solve the problems.

Finally, about 2:45 P.M., Asbury received a call from Chicago in which the shipper complained about the way its merchandise was being handled at Scobey's, Scobey's having apparently reported to the shipper. Perez was ordered to lock the trailer and return to the terminal, where he was discharged by Asbury.

(9) Local Union No. 657 filed a grievance in connection with the discharge which eventually reached arbitration and was heard by the Joint Committee at a meeting in Biloxi, Mississippi. After a full hearing, the committee decided in favor of the company and against Perez (and the Union). At the hearing, evidence was introduced that more than ten (10) customers of the company had given instructions not to send Sadrach Perez back to their places of business, stating that they would refuse the freight if it was to be delivered and would not give up freight if he was to pick it up.

(10) On July 19, 1971 Perez filed a charge with the National Labor Relations Board against the In-

ternational Brotherhood of Teamsters alleging a violation of the act in its failure to properly represent him. The Regional Director declined to issue a complaint. Perez appealed to the General Counsel who denied the appeal. Represented by counsel, Perez has a current claim pending before the Industrial Accident Board arising out the 1971 alleged accident in which he claims that he is totally and permanently disabled, claiming to have a bad back.

23. None of the plaintiff employees could satisfy all of the qualifications for a road driver position according to the company manual due to age or weight or driving record. The qualifications apply universally to all job applicants and employees and are not in any manner racially discriminatory.

24. The driving, work, and/or physical records of the plaintiffs are of such nature that only casual consideration need be given to determine that the plaintiffs cannot qualify to become road drivers. The failure of the defendant truck line to proceed with a detailed, comprehensive consideration of the plaintiffs' applications was for valid business reasons and not because of any discrimination against any of the plaintiffs because of their race or national origin.

25. Both the defendant truck line and the Union defendants are bound by the contracts in that neither can unilaterally change the contract provisions by allowing a merger of seniority lists, a transfer of seniority or in any other manner attempting to alter, combine or discard the provisions of the separate contracts for city and road drivers without subjecting themselves to economic or other negative sanctions by the non-offending party.

26. Refusal by the defendant truck line to permit job transfers without loss of terminal seniority or to maintain

separate seniority lists is a reasonable and proper business practice and in accordance with the Union Contract and in no manner causes, perpetuates or results in discriminatory practices by any of the defendants.

27. The fact that there are separate Union Contracts and job qualifications for city and road drivers is reasonable both as an accepted business practice and by the fact that the National Labor Relations Board recognizes the two job groups as separate bargaining units.

28. The defendant truck line did not prevent or discourage the plaintiff employees from seeking or securing a road job transfer nor from making written application for said position because of their race or because they filed a Complaint with the Equal Employment Opportunity Commission, or for any other reason.

29. The defendant truck line and Union did not discriminate against the plaintiff employees because they made a charge or indicated they would make a charge against the defendants to the Equal Employment Opportunity Commission.

30. The defendants did not discriminate against the plaintiffs or any other employee or Union member on the basis of race or otherwise.

31. Plaintiffs have at no time moved for a prompt determination of the question of whether or not this cause of action should be maintained as a class action and have offered no credible proof on the question.

32. Plaintiffs have offered no proof of liability or damages as to any class, having confined the evidence, arguments and post trial brief to the individual claims of the named plaintiffs, and having stipulated at the commencement of trial that the only issue before this Court with respect to the defendant truck line involved its failure to consider the individual plaintiffs' applications for employment as road drivers.

33. While not compelling, further evidence of a continuing desire of the majority of the local Union membership is contained in the affidavit of R. C. Shafer, President and Business Manager of the local Union, and George Hardeman, Jr., Recording Secretary of the local Union, filed February 23, 1973. The parties have stipulated that, if called, these two men would testify that at the Unon Membership meeting on February 11, 1973, after the trial of this case was completed, the employees of the defendant truck line, and others, rejected proposals that the next city and road driver contracts to be merged and that both job classifications be permitted to transfer to the other with company seniority for all purposes. A further proposal to the effect that the seniority of the employees working for the truck lines remain as it is in the current contracts was approved by a vote in excess of two to one.

CONCLUSIONS OF LAW

1. I conclude as a matter of law that none of the defendants violated Title 42, United States Code, Section 2000e-5 or any section of Title 42 relating to race discrimination.

2. I further conclude that this cause of action is not a proper one for class action and that, therefore, the class action claims in the Complaint should be, and the same are hereby, DISMISSED.

3. I further conclude as a matter of law that the plaintiffs, and each of them, take nothing by reason of their suit and that the defendants and each of them are entitled to judgment.

4. I further conclude that the defendants, and each of them, recover their court costs incurred herein against the plaintiffs.

ENTERED this 22nd day of March, 1973, at San Antonio, Texas.

/s/ JOHN H. WOOD, JR.
John H. Wood, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION No. SA-71-CA-302

(Caption Omitted in Printing)

Judgment

On the 29th day of January, 1973, this action came on for trial before the Court, the Honorable John H. Wood, Jr., United States District Judge presiding, and the issues having been duly tried and heard and the Court, having made Findings of Fact and Conclusions of Law, is of the opinion that Judgment should be entered for the defendants.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the plaintiffs take nothing by reason of their suit, that the action be dismissed on the merits, and that the defendants, and each of them, recover their Court costs incurred herein against the plaintiffs.

ENTERED this the 22nd day of March, 1973, at San Antonio, Texas.

/s/ JOHN H. WOOD, JR.
John H. Wood, Jr.
United States District Judge

JESSE RODRIGUEZ, SADRACH G. PEREZ and MODESTO HERRERA, on their own behalf and on behalf of those similarly situated, *Plaintiff-Appellants*

v.

EAST TEXAS MOTOR FREIGHT, SOUTHERN CONFERENCE OF TEAMSTERS AND TEAMSTERS LOCAL 657, *Defendant-Appellees.*

Fifth Circuit.

Nov. 25, 1974.

Appeal from the United States District Court for the Western District of Texas

Before WISDOM, AINSWORTH and GODBOLD, *Circuit Judges.*

WISDOM, *Circuit Judge:*

In this employment discrimination case the plaintiffs-appellants attack two ubiquitous practices in the trucking industry: (1) the trucking companies' requirement that "city drivers" resign from their city driver jobs before applying for the more lucrative and soughtafter "road" or "line driver"* positions, and (2) the companies, rule preventing city drivers from carrying their seniority to road driver jobs. The plaintiffs, Mexican-American city drivers for East Texas Motor Freight (ETMF), brought this action below as a class action, contending that these facially neutral practices of ETMF and the defendant union orgganziations perpetuate the effects of past discriminatory hiring practices and thus violate Title VII of the Civil Rights Act of 1964[1] and 42 U.S.C. § 1981.[2] The District

* The terms "road driver" and "line driver" are used interchangeably throughout this opinion.

[1] (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual,

Court found that the cause of action was inappropriate for a class action, and that none of the defendants had violated Title VII or Section 1981. We reverse.

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or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

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(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

42 U.S.C. § 2000e-2.

[2] All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981.

I.

Facts

In the trucking industry, "road" or "line driver" is considered a separate job classification from "city, pick-up and delivery driver". Road drivers for ETMF drive 10-speed tractors with semi-trailers, carrying freight among the 52 ETMF terminals in 19 states. Road drivers work long hours, and often spend long periods of time away from home, but they have the prestige driving job in the trucking industry, and they generally bring home the highest pay. Freight brought to a terminal by a road driver is unloaded and reloaded onto other trucks, either onto another tractor-trailer, or onto a "bobtail", a truck with the body and engine mounted on the same chassis. A city driver then delivers the merchandise locally.

In conformance with the practice in the trucking industry generally, ETMF "domiciles" road drivers at only some of its terminals: those in cities that are relay points equidistant between major centers, and those in "head haul" cities, cities at the end of a line of service that generate a significant amount of freight to other points in the company's system. In Texas ETMF has six terminals that domicile road drivers, and fifteen terminals that do not.[3] ETMF has city drivers at all terminals.

The primary responsibility for hiring drivers, both city and road, in the ETMF system rests with the manager at the terminal where a vacancy occurs. The manager interviews applicants, reviews their qualifications, and makes recommendations to officials at the corporate headquarters

[3] Those terminals domiciling road drivers are: Dallas, El Paso, Longview, Pecos, San Angelo, and Texarkana. Only city drivers are domiciled at the following terminals: Abilene, Amarillo, Atlanta, Austin, Beaumont, Brownwood, Ft. Worth, Henderson, Houston, Lubbock, Lufkin, Marshall, Odessa, San Antonio, and Tyler.

in Dallas. Although the Dallas officials must approve each applicant for employment, the terminal manager makes the affirmative decision to hire. The unions have no responsibility for hiring.

ETMF's qualifications for road drivers are more stringent than for city drivers. City drivers must be at least 21 years old and have at least one year pick-up and delivery experience. Road drivers must be at least 27 years old and have three years "immediate prior line haul road experience". Both city and road drivers face a battery of other requirements involving driving, work, credit, and police records. They must be familiar with Department of Transportation regulations, have a high school education or the equivalent, and hold a valid commercial drivers license. Finally, both city and road drivers must pass physical, written, and driving examinations. Everett E. Cloer, ETMF's Vice President in charge of industrial relations testified to the importance of driving tests for road drivers: "Well, first of all [applicants] are given a 25-mile driving test within the city to see if they can handle the transmissions of this equipment, see what their driving reactions are, et cetera. If they pass that, then they are given an in-cab trip with the supervisor. The supervisor rides with them on a student [over-the-road] trip."[4] Counsel for the parties stipulated that the line driver requirements are nondiscriminatory.

[4] The importance of road testing as a criterion for hiring road drivers was echoed by Ed A. Asbury, Manager of ETMF's San Antonio terminal. When asked how he would determine whether city drivers were qualified to be road drivers, he answered: "I think I should have to ride with those boys to be able to answer that question. I don't know . . . I would have to—if I were going to make an honest appraisal, I would get out and ride with that man. I would ride with him here in town, and I would ride with him on the freeway. I would ride with him in line haul equipment. I would see what he would do, how he conducted himself, how he handled his equipment."

City drivers and road drivers are covered by different collective bargaining agreements. The defendant-appellee Local 657 has a collective bargaining agreement with ETMF covering city drivers at ETMF's San Antonio terminal. Local 657 represents no road drivers of ETMF. The defendant-appellee Southern Conference of Teamsters, a delegate body of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, is made up of representatives from the affiliated Locals in ten southern states. Separate collective bargaining agreements for city and road drivers are drawn by the Southern Conference and negotiated by the Conference with trucking company representatives. Then the agreements are passed down to the Locals to be approved and made part of the contracts between the Locals and the trucking companies.

Since 1954 ETMF has followed a "no-transfer" policy, prohibiting the transfer of drivers between city and road driver classifications and between terminals.[5] Under the policy, in order for a city driver to obtain a position as a road driver, he must resign his city driver job and apply for a road driver slot. He thereby forfeits all accumulated seniority. In effect, he stands on no better footing in applying for a road driver job than a complete stranger to the company. For the purposes of strengthening his application, he gains no "credit" for his years as a city driver. And if his bid to be a line driver fails, there is no guarantee that he will be rehired as a city driver. ETMF's policy against transfers is complemented by the fact that under collective bargaining contracts between ETMF and Local unions, including the defendant Local 657, city drivers who transfer to the road do not carry over their "competitive-status" seniority, that is, seniority for job bidding and lay

[5] Road drivers for ETMF presently operate under a "modified" terminal no-transfer policy. If a road driver at one terminal is laid off, he can "bump" a less-senior road driver at another terminal.

off purposes.[6] Under separate collective bargaining agreements for road and city drivers, competitive-status seniority runs from the time an employee enters a particular collective bargaining unit. Transfer is not expressly prohibited, but it is not expressly permitted either, and the agreements have been universally interpreted to prohibit the carryover of seniority from one classification to another.

For thirty days in January and February 1972, to ease morale problems among its city drivers who wanted to become road drivers, ETMF relaxed its no-transfer policy and permitted city drivers to transfer to line jobs, if they could qualify.[7] During this period, although all other requirements were maintained, the requirements of three years line driving experience was waived. The modification did not affect the dual seniority system, established by the separate collective bargaining agreements. Any city driver transferring to the road under the modified policy still lost his seniority for job bidding and lay off purposes. Moreover, the one-time-only change in policy opened the possibility of transfer only to those city drivers who worked out of terminals domiciling road drivers; the restrictions on interterminal transfers remained in effect. In the Southern Conference area 220 city drivers showed an interest in transferring under the temporary policy, and 35 to 50 city drivers tried out; five succeeded in transferring to road driver jobs.[8]

Against the history of these policies must be juxtaposed one crucial set of facts. The parties stipulated that before 1970 East Texas Motor Freignt had never employed a black or Mexican-American as a road driver in the Texas-South-

[6] The employee keeps his company seniority for fringe benefit purposes.

[7] Road drivers were also permitted to transfer to the city.

[8] All five of the city drivers to make successful transition to road driver jobs worked out of the Memphis, Tennessee, terminal.

ern Conference area.[9] ETMF's road driver force in that area numbered approximately 180, all white/anglo drivers. After charges were filed by plaintiff Jesse Rodriguez with the Equal Employment Opportunity Commission (EEOC) on August 20, 1970, the company hired three Mexican-American road drivers in El Paso. By the time of trial, the company had still not hired a single black road driver in Texas. In comparison, approximately 35 percent of ETMF's city drivers in Texas are black or Mexican-American. Of a total of 575 city drivers for ETMF in the state, 111 are Spanish-surnamed, 95 are black, and 369 are anglo.

The three named plaintiffs, Jesse Rodriguez, Sadrach Perez, and Modesto Herrera, are Mexican-American city drivers at ETMF's San Antonio terminal. With the exception of one road driver who temporarily worked out of San Antonio in 1970, ETMF road drivers have never been domiciled in San Antonio. San Antonio city drivers were therefore not able to take advantage of the temporary modification of the no-transfer rule in the winter of 1972. Perez was hired as a city driver in 1959, Herrera was hired in 1964, and Rodriguez was hired in 1965. They stipulated that they were employed at the San Antonio Terminal without regard to race, color, or national origin. Each is a member of Local 657 and the Southern Conference.

Although none of the named plaintiffs made written application for a line driver job until 1970, Herrera made verbal inquiries about transferring to the road as early as 1965. In 1970 the plaintiffs submitted letters to the San Antonio terminal manager, requesting transfer to road driving jobs. The terminal manager received and filed the letters. ETMF stipulated that it never considered these applications for employment as road drivers. On August 20, 1970, Rodriguez filed a written charge with the EEOC

[9] The Southern Conference covers all Teamster members in Texas, except for some in El Paso.

complaining that the policies of ETMF, Local 657, and the Southern Conference relegated Mexican-Americans and blacks to city driver jobs. Similar charges were filed by Herrera on March 11, 1971, and by Perez on June 7, 1971. On May 18, 1971, Perez was discharged from his employment with ETMF. The plaintiffs received thirty-day "right-to-sue" letters on October 11 and 13, 1971. On October 26, 1971, the plaintiffs filed this class action suit in district court.

Prior to the trial in this cause, the parties entered into a series of stipulations. In addition to the stipulations already mentioned, the parties agreed to the following:

The claim of discrimination of the Plaintiffs is solely based upon the fact that after their original employment, they have been "locked in" to the lower paying job of city driver and denied a job as line driver because of:

(a) The maintenance of separate seniority rosters for city and line drivers;

(b) The fact that any city driver regardless of his race, if he transferred from city driver classification to a road driver classification, loses his accumulated city seniority;

(c) The Defendant East Texas Motor Freight discouraged inquiries from Plaintiffs concerning the qualifications and/or availability of line driving jobs;

(d) The fact that the Defendant East Texas Motor Freight had always employed Anglo/white applicants as road drivers;

(e) That the company's policy and practice of recruiting line or road drivers has been based to a great extent on a word of mouth system. Since the company's line drivers and supervisory terminal personnel are almost exclusively Anglo/white, such a practice has

continued the alleged illegal exclusion of Mexican-Americans and Negroes as road drivers;

That the only issue presently before the Court pertaining to the company is whether the failure of the Defendant East Texas Motor Freight to consider Plaintiffs' line driver applications constituted a violation of Title VII and 42 U.S.C. § 1981.

Over strenuous objection at trial, the district court admitted evidence relating to the qualifications of the named plaintiffs to be road drivers. After trial, the court concluded that none of the named plaintiffs could satisfy all of the road driver requirements "according to the company manual due to age or weight or driving record". Furthermore, the court found, "[t]he driving, work, and/or physical records of the plaintiffs are of such nature that only casual consideration need be given to determine that the plaintiffs cannot qualify to become road drivers". In conclusion, the court found that "[t]he defendants did not discriminate against the plaintiffs or any other employee or union member on the basis of race or otherwise". The plaintiffs appealed. The Equal Employment Opportunity Commission, as amicus curiae, has filed a brief urging reversal of the decision of the district court.

II.

The Class Acting Action Claim

The plaintiffs brought this suit "on their own behalf and on behalf of other Mexican-American and black individuals who similarly have been denied equal employment opportunities by the defendants and additionally on behalf of Mexican-American and black individuals who may, in the future, be denied equal employment opportunities by the defendants because of their national origin and race". They described the class more particularly as "all of defendant

East Texas Motor Freight's Mexican-American and black in-city drivers included in the collective bargaining agreement entered into between East Texas Motor Freight and the Southern Conference of Teamsters covering the State of Texas . . . [and as] all Mexican-American and black applicants for line driver positions with East Texas Motor Freight included in the above area covered by the Southern Conference of Teamsters from July 2, 1965, to the present". Neither the plaintiffs nor the defendants moved for a ruling under FedR.Civ.P. 23(c)(1) as to whether the suit could be maintained as a class action, and the court made no ruling until after the trial was completed. In its findings the court stated:

> 31. Plaintiffs have at no time moved for a prompt determination of the question of whether or not this cause of action should be maintained as a class action and have offered no credible proof on the question.
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> 32. Plaintiffs have offered no proof of liability or damages as to any class, having confined the evidence, arguments and post trial brief to the individual claims of the named plaintiffs, and having stipulated at the commencement of trial that the only issue before this Court with respect to the defendant truck line involved its failure to consider the individual plaintiffs' application for employment as road drivers.

Concluding that the cause of action was "not a proper one for class action", the court dismissed the class action claims. In our opinion, the district court's dismissal of the class action was erroneous.

Rule 23(c)(1) provides that "[a]s soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained". A class action may not be dismissed because the class representatives fail to ask for a ruling on

the propriety of the class nature of the suit. That responsibility falls to the court. "The court has an independent obligation to decide whether an action brought on a class basis is to be maintained even if neither of the parties moves for a ruling under subsection (c)(1)". Wright & Miller, Federal Practice and Procedure, Civil § 1785 (1972).

The plaintiff class representatives, of course, must establish that the action meets the requirements of Rule 23(a).[10] See Rossin v. Southern Union Gas Co., 10 Cir. 1973, 472 F.2d 707, 712; Johnson v. Georgia Highway Express, Inc., 5 Cir. 1969, 417 F.2d 1122, 1125 (Godbold, Jr., concurring); 3B J. Moore, Federal Practice ¶ 23.02-2 (2d ed. 1974); Wright & Miller, Civil § 1759 at 578. But the requirements of Rule 23(a) must be read liberally in the context of suits brought under Title VII and Section 1981. See Wright & Miller, Civil § 1771. Suits brought under these provisions are inherently class suits. By definition, discrimination on the basis of race or national origin is a class wrong. Oatis v. Crown Zellerback Corp., 5 Cir. 1968, 398 F.2d 496, 499. And a suit charging employment discrimination is naturally "a sort of class action for fellow employees similarly situated". Jenkins v. United Gas Corp., 5 Cir. 1968, 400 F.2d 28, 33; see Parham v. Southwestern Telephone Co., 8 Cir. 1970, 433 F.2d 421, 428; cf. Newman v. Piggie Park Enterprises, 1968, 390 U.S. 400, 401-402, 88 S.Ct. 964, 19 L.Ed.2d 1263. When class relief is sought in the complaint, therefore, the court should liberally apply

[10] (a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
Fed.R.Civ.P. 23.

the requirements of Rule 23(a). See Bing v. Roadway Express, Inc., 5 Cir. 1973, 485 F.2d 441, 446; compare Danner v. Phillips Petroleum Co., 5 Cir. 1971, 447 F.2d 159, 164 (class relief not sought in complaint).[11]

There is no serious dispute that the plaintiffs here satisfied the first three criteria in Rule 23(a). The class clearly meets the requirements that the members be so numerous that joinder would be impractical, that there are common questions of law and fact, and that the claims and defenses of the representative parties are typical. The defendants argue strenuously, however, that there was insufficient guarantee that the named parties would "fairly and adequately protect the interests of the class".

The defendants maintain that the named plaintiffs have acted antagonistically to the interests of a majority of Mexican-American and black city drivers. The complaint requests that the court order the city and line driver seniority lists be merged to create a single seniority system based solely on the date that an employee first joined the company. The desirability of such relief, argue the defendants, was expressly rejected at a membership meeting of the defendant Local 657 on February 11, 1973, approximately two weeks after the completion of the trial. An affidavit recounting the results of voting at the meeting was admitted into evidence under Fed.R.Civ.P. 59. At the meeting the union members voted 87 to 21 against a proposal that the city and road driver contracts be merged and that city drivers be permitted to transfer to the road while road drivers were permitted to transfer to the city. Of the 138 people present at the meeting, 121 were city pick-up and delivery drivers. Eighty-three were Mexican-Ameri-

[11] In *Danner* this Court expressly limited its holding: "All we hold is that class action relief must be predicated upon a proper class action complaint satisfying all the requirements of Rule 23". 447 F.2d at 164 n. 10.

can, 42 were Anglo, and 13 were Negro. If all possible Anglo votes were deducted from the total against it, the proposal still would have been rejected by a majority of Mexican-American and Negro votes.

We do not ascribe the significance to the vote that the defendants urge. We cannot tell what assumptions were made implicit. Furthermore, the membership of Local 657, even the Mexican-American and black membership, is far from congruent with the class described in the complaint. The Local's membership is both more restricted and more extensive. The Local draws its membership from the San Antonio area; the complaint covers city drivers throughout Texas. The Local has members who work for trucking firms other than ETMF; the class outlined in the complaint is restricted to employees or applicants of ETMF. The extent to which the vote represents the actual preference of the class, therefore, is unclear.

Even taking the results of the vote at face value,[12] we reject the district court's conclusion that there was sufficient reason to dismiss the class action in this case. Especially in light of the fact that the evidence of the union vote was not received until two weeks after the trial, there were two preferable options open to the trial judge. First,

[12] The outcome of the vote is consistent with what one might expect of a vote of ETMF's San Antonio city drivers. Separate seniority rosters in separate contracts prevent laid-off road drivers from bumping less senior city drivers from their jobs. Because ETMF does not domicile road drivers in San Antonio, to take advantage of a merger of seniority rosters and obtain a road job, a San Antonio city driver with ETMF would have to move to another city. Those city drivers who would not desire such a move, or who would not desire to transfer to the road for some other reason, would not gain from a merger of seniority rosters. We note that in a similar case a court has recently refused to order a merger of seniority rosters because to do so would injure those members of the plaintiff class who did not wish to transfer to road driving jobs. Sabala v. Western Gillette, Inc., S.D.Ky.1973, 362 F.Supp. 1142, 1153.

he could have shaped the class to remove any possible antagonism between the representatives and some of the city drivers. The court could have narrowed the class or separated it into subclasses for purposes of relief. See Oatis v. Crown Zellerbach Corp., 398 F.2d at 499. Or, the court could have shaped the relief to avoid any injustice to the dissenting class members. District courts have wide discretion in fashioning relief under Title VII, Franks v. Bowman Transportation Co., 5 Cir. 1974, 495 F.2d 398, 414; Bing v. Roadway Express, Inc., 485 F.2d at 448-449. And flexibility and careful tailoring of judicial decrees in Title VII cases are the order of the day. See, e. g., Sabbala v. Western Gillette, Inc., S.D.Tex.1973, 362 F.Supp. 1142. The disagreement here concerned only the proper remedy; there was no antagonism with regard to the contention that the defendants practiced discrimination against the plaintiff class. We do not believe that disagreement within the class as to the remedy desired, surfacing so late in the litigation, should have resulted in a dismissal of the class action.

Because the trial was completed before the court made a ruling whether the class action could be maintained, there were involved none of the imponderables that make the decision so difficult early in litigation, and that demand a substantial amount of district court discretion and corresponding appellate deference. See Johnson v. Georgia Highway Express, Inc., 417 F.2d at 1123. We have before us a record of the proceedings, completed as a class action, and we can judge for ourselves the possible effects of any antagonism of interests. We find these effects insubstantial and curable. We conclude that the plaintiffs met the requirements of Rule 23(a) and established a proper class action under Fed.R.Civ.P. 23(b)(2).[13]

[13] (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

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(2) the party opposing the class has acted or refused to act

The district court's finding that the plaintiffs offered no proof on the question of liability or damages to any class is clearly erroneous. As we describe more fully below, the plaintiffs entered into evidence statistics sufficient to present a prima facie case of past hiring discrimination, transmitted into the present by the no-transfer rule and separate seniority rosters which "lock" employees into city driver positions and prevent their transfer to road driver status. The plaintiffs further submitted, without objection, detailed information pertaining to all ETMF city drivers including their names, seniority dates, and domiciles. It is true, as the district court noted, that the plaintiffs concentrated at trial on the individual claims of the named plaintiffs. But the plaintiffs were not required to present more than a prima facie case of discrimination against the class. Nor did the plaintiffs effectively abandon their class claims by stipulating that "the only issue presently before the Court pertaining to the company is whether the failure of the Defendant East Texas Motor Freight to consider Plaintiffs' line driver applications constituted a violation of Title VII and 42 U.S.C. § 1981". The stipulation was apparently entered in an attempt to eliminate some confusion in the exposition of evidence at trial, not to foreclose the class issues. The plaintiffs continued to proceed as in a class action. And this was made clear to the trial court and the defendants.[14]

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on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;

Fed.R.Civ.P. 23.

[14] The following colloquy took place between the trial judge and Mr. Heidelberg, counsel for the plaintiffs:

THE COURT:

I assume, this being a matter before the court, that Mr. Heidelberg probably has in mind using this witness to establish a general practice and to show that this man was similarly

To the extent that the district court's finding that the plaintiffs failed "to offer proof of liability or damages as to any class" refers to the class of "all Mexican-American and black applicants for line driver positions with East Texas Motor Freight", the finding is not erroneous. The plaintiffs never pursued the action on behalf of these individuals, and the district court's dismissal of the class action on their behalf was proper. On remand, the class considered for relief should be defined as all of East Texas Motor Freight's Mexican-American and black city drivers included in the collective bargaining agreement entered into between East Texas Motor Freight and the Southern Conference of Teamsters covering the State of Texas.

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treated although he may have no personal complaint. It would merely corroborate the testimony that such a practice exists. For that limited purpose—

MR. HEIDELBERG:

For that purpose and also, Your Honor, it has not been established that this is not a class action. The allegation is made in the complaint and there have been no motions filed. The answers of the defendants deny that this is a class action, but of course we maintain that there is class action involved.

THE COURT:

Well, are you contending now as far as this trial is concerned that this is a class action?

MR. HEIDELBERG:

Yes, Your Honor.

THE COURT:

And how many people are you going to try to establish this by?

MR. HEIDELBERG:

As outlined in the complaint, Your Honor, the class would consist of the Mexican-American and black city drivers who are located in the State of Texas covered by the jurisdiction of the Southern Conference Supplemental Agreement.

III.

Liability

In the last few years we have seen a large number of suits brought in federal court, attacking facially neutral policies which allegedly discriminate against minority city drivers by perpetuating patterns of discrimination in the hiring of line drivers by private firms in the trucking industry.[15] As the federal courts have thus become familiar with the practices in the trucking industry, a clear pattern has emerged: throughout much of the industry, trucking companies, and the unions representing drivers, have erected barriers to the movement of non-white/non-Anglo workers from pick-up and delivery jobs to the coveted road driver positions. The employment practices attacked in this suit—the no-transfer and seniority policies—are prevalent in the trucking industry. Typically, city drivers are not permitted to transfer to line driver jobs. Where they are, they are not generally permitted to carry over their seniority for job bidding and lay off purposes. The result is, at the very least, a strong disincentive for city drivers to transfer to the road. City drivers are thus effectively "locked in" their city driving jobs with no realistic possibility of transferring to line driving positions. Were there no more to the scenario, of course, the federal courts would likely have no concern; there is nothing per se illegal in no-transfer or separate seniority policies. But, as the courts have noted with some frequency, the policies often operate to perpetuate the effects of hiring discrimination. The overall result is a situation where in many areas of the country blacks and Mexican-Americans serve as city drivers, while road-driver fleets in private trucking firms, at least until very recently, have been

[15] See, e. g., the cases cited in note 17 *infra*.

virtually all-white/Anglo.[16] Thus it is that facially neutral no-transfer and seniority policies have come under a broad attack, for "[i]t is now beyond cavil that Title VII of the Civil Rights Act of 1964 proscribes employment practices and procedures which, although presently neutral and nondiscriminatory on their face, tend to preserve or continue the effects of past discriminatory practices". United States v. N. L. Industries, Inc., 8 Cir. 1973, 479 F.2d 354, 360. See Griggs v. Duke Power Co., 1971, 401 U.S. 424, 430, 91 S.Ct. 849, 28 L.Ed.2d 158; Pettway v. American Cast Iron Pipe Co., 5 Cir. 1974, 494 F.2d 211, 236; Local 189, United Papermakers & Paperworkers v. United States, 5 Cir. 1969, 416 F.2d 980, 990-991, cert. denied, 397 U.S. 919, 90 S.Ct. 926, 25 L. Ed.2d 100.

A. *Discrimination by East Texas Motor Freight*

We begin by examining the past hiring patterns of ETMF. See United States v. Jacksonville Terminal Co., 5 Cir. 1971, 451 F.2d 418, 450, cert. denied, 406 U.S. 906, 92 S.Ct. 1607, 31 L. Ed.2d 815. Although the plaintiffs do not attack ETMF's road-driver hiring practices—and indeed stipulated that they are not now discriminatory—we must begin there. A pattern of past discriminatory hiring is essential to the plaintiffs' case. See Jones v. Lee Way Motor Freight, Inc., 10 Cir. 1970, 431 F.2d 245, 247, cert. denied, 401 U.S. 954, 91 S.Ct. 972, 28 L.Ed.2d 237.

[16] Two recent studies have confirmed that Negroes and Mexican-Americans have been excluded from line driving jobs. One study found that, nationally, Negroes comprised only 2.4 percent of the over-the-road drivers for private trucking firms in 1968. Firms that employed more than 100 persons had only one-percent Negro road drivers. Leone, The Underutilization of Negroes as Truck Drivers By For-Hire Motor Carriers, 22 Lab.L.J. 631, 633 (1971). Another Study, covering 329 trucking companies for the year 1970, found that Negroes comprised 2.7 percent of the companies' road drivers. In these same companies, Spanish-surnamed Americans made up only .8 percent of the road drivers. See Nelson, Equal Opportunity in Trucking: An Industry at the Crossroads (GPO 1971).

A prima facie case of discrimination may be established by statistical evidence, and statistical evidence alone. "The inference [of discrimination] arises from the statistics themselves and no other evidence is required to support the inference." United States v. Hayes International Corp., 5 Cir. 1972, 456 F.2d 112, 120. The statistics in the instant case are overpowering. East Texas Motor Freight has stipulated that prior to the date that Rodriguez filed a charge of discrimination with the EEOC in 1970, ETMF had never employed a Negro or Mexican-American as a line driver in that portion of the State of Texas covered by the Southern Conference Area Supplemental Agreement. By the date of trial, two and a half years later, ETMF had hired three Mexican-Americans to join its Texas road driver force of approximately 180 drivers. By trial ETMF had still not hired a Negro road driver in Texas.

These figures establish a prima facie case of past discrimination in hiring. In other trucking cases the statistics have shown a similar pattern. In Jones v. Lee Way Motor Freight, Inc., 10 Cir. 1970, 431 F.2d 245, 247, for example, the Court summarized: "[T]here were no Negro line drivers; most whites were line drivers; and all Negroes were city drivers." Similarly, in Bing v. Roadway Express, Inc., 5 Cir. 1971, 444 F.2d 687, 688, the Court noted: "All road drivers are, and always have been white; all Negro drivers are city drivers, though not all city drivers are Negro." The similarity between the employment situations in both *Bing* and *Jones* and that here is striking. In *Bing* and *Jones*, and in each of the cases cited in the margin, the court held that the statistics were sufficiently potent to constitute a prima facie case.[17]

[17] Thornton v. East Texas Motor Freight, 6 Cir. 1974, 497 F.2d 416 (At ETMF's Memphis terminal, all of the 105 road drivers were white. Of the 131 city drivers, 43 were black.); Witherspoon v. Mercury Freight Lines, Inc., 5 Cir. 1972, 457 F.2d 496 (No black had ever worked for Mercury Freight as a long haul driver.); Hairston v. McLean Trucking Co., M.D.N.C.1973, 62 F. R.D. 642 (Of 479 over-the-road drivers at Winston-Salem terminal, nine were black.); United States v. Navajo Freight Lines, Inc., C.D. Calif.1973, 6 FEP Cases 274 (No black or Spanish-surnamed road drivers until 1970.); Sabala v. Western Gillette, Inc., S.D.Tex. 1973, 362 F.Supp. 1142 (Of 29 road drivers in Houston, 28 were white/Anglo; one was Mexican-American. Of 65 drivers in Houston, 42 were either black or Mexican-American.); United States v. Lee Way Motor Freight, Inc., W.D.Okl.1973, 7 EPD ¶ 9066 (940 road drivers were white, 14 were black, and 12 were other than white or black.); Sagers v. Yellow Freight System, Inc., N.D.Ga.1972, 6 EPD ¶ 885 (In 1968 of 150 road drivers for Yellow Freight in the Southern Conference area, none were black. As of May 12, 1972, only 3.6 percent of Yellow Freight's road drivers in the Southern Conference Area were black).

Once the plaintiffs established a prime facie case, the burden fell to the defendants to rebut the statistics or to explain the disparity in hiring.[18] See Rowe v. General Motors Corp., 5 Cir. 1972, 457 F.2d 348, 358. Having stipulated to the statistics, the defendants cannot, of course, dispute them. But the defendants do imply that the force of the statistical disparity is countered by the plaintiffs' stipulations that ETMF's qualifications for road drivers are not discriminatory and that the plaintiffs were employed at the San Antonio terminal without regard to race or national origin. The defendants also argue that the plaintiffs have not shown that any members of the plaintiff class were qualified as road drivers. We reject these contentions.

First, only historical hiring practices are at issue here. Whatever the nature of present hiring practices,[19] they

[18] Although the union defendants are not responsible for ETMF's hiring policies, the case against the unions, like that against ETMF, begins with the showing of past hiring discrimination that originally operated to foreclose the road driver jobs to blacks and Mexican-Americans. See p. 60, *infra*. The unions thus join ETMF in its effort to rebut the prima facie case of hiring discrimination.

[19] We do not accord the plaintiff's stipulation concerning present hiring practices the broad reading that the defendants do. See pp. 57-58, *infra*.

neither explain nor justify, without more, the past failure to hire minority line drivers. Without some proof presented by the defendants to the contrary, we must assume that the "lily white"/Anglo nature of the ETMF road driver fleet until 1970 resulted from discriminatory hiring practices.

Second, we accord no weight to the stipulation that the named plaintiffs were not discriminated against when they were hired at the San Antonio terminal as *city* drivers. It was their inability to gain a *road* driver job with ETMF at any terminal in Texas that the plaintiffs decry.

Finally, the defendants rely on language from McDonnell Douglas Corp. v. Green, 1973, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668, in which the Court said:

> The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prime facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

Nothing in this language is inconsistent with the accepted practice of federal courts' recognizing statistics as establishing a prima facie case of employment discrimination. Sagers v. Yellow Freight System, N.D.Ga.1973, 5 EPD ¶ 8885 at 5759. In *McDonnell Douglas* a black worker, laid off in a reduction-in-force, complained that he was not rehired because of his race and involvement in the civil rights movement. The Court emphasized that the "critical issue . . . concerns the order and allocation of proof in a private, [*non-class-action*] challenging employment discrimination". 411 U.S. at 800, 93 S.Ct. at 1823. (emphasis supplied). Furthermore, the Court observed in a crucial footnote that the test outlined in the text of the opinion for a prime facie case "is not necessarily applicable in every respect to differing factual situations". 411 U.S. at 802, n. 13, 93 S.Ct. at 1824.

The present case differs in several significant respects from *McDonnell Douglas*. First, this is a class action. Equally important, the Supreme Court noted in *McDonnell Douglas* no history of past employment discrimination or any other factor that might have discouraged the respondent from applying for a job. Indeed, he had had a job with the company, and its refusal to rehire him after his layoff formed the gravamen of the complaint. In contrast, at the time of Rodriguez's complaint to the EEOC, ETMF had never hired a black or Mexican-American line driver in the Texas-Southern Conference area. Given these past hiring practices, "it is not unreasonable to assume that minority persons [would] . . . be reluctant to apply for employment, absent some positive assurance that if qualified, they [would] in fact be hired on a more than token basis". Carter v. Gallagher, 8 Cir. 1972, 452 F.2d 315, 331 (en banc). It would be unrealistic to require the plaintiffs to show that blacks and Mexican-Americans applied for road driver jobs they knew they could not obtain. See Bing v. Roadway Express, Inc., 485 F.2d at 451; Jones v. Lee Way Motor Freight, Inc., 431 F.2d at 247. We note also another distinction. In *McDonnell Douglas* the respondent's qualifications were undisputed. He had held the job, and apparently served satisfactorily, before he was laid off. In the instant case, in contrast, the possibility of meeting one of the most important criteria for hiring—the road test—has been denied to the class of city drivers. Deprived of the opportunity to take a driving test, the plaintiffs could not prove they were qualified to become road drivers.

Proof that the relevant labor pool lacks qualified minority persons may, of course, even in a class action, rebut a

prima facie case of hiring discrimination. Congress did not intend that Title VII force employers to hire unqualified applicants of *any* race or ethnic background. Griggs v. Duke Power Co., 410 U.S. at 430, 91 S.Ct. 849; Sagers v. Yellow Freight System, Inc., 5 EPD at 5758. But it was ETMF's burden to show that its history of hiring only white/Anglo line drivers resulted from a scarcity of available Negroes and Mexican-Americans qualified to serve in that position. United States v. Hayes International Corp., 456 F.2d at 120. ETMF has not met this burden.

The next steps in our analysis were clearly delineated by Judge Thornberry in *Bing:* "Once is has been established that an employer or union has discriminated in the past, then, the inquiry is twofold: (1) Does the present policy perpetuate the past discrimination? (2) Is the present policy justified by a showing of business necessity?" 444 F.2d at 690.

The conclusion is inescapable that both the no-transfer policy and the maintenance of dual seniority rosters, one for city drivers and one for line drivers, have perpetuated ETMF's past discriminatory hiring practices. Together, they have removed all realistic opportunity for transfer. Under the no-transfer policy a city driver wishing to transfer to road status must first resign his city driver position, with no assurance that he will be hired as a line driver, and no assurance that if he fails to be hired he will be rehired as a city driver. Even if the city driver were to become a road driver, because of the separate seniority rosters he would lose his accumulated competitive-status seniority. He would have the last choice of routes and would be the first laid off. And if laid off, he would have no "bumping" rights to recover his city driver job. "In any industry loss of seniority is a critical inhibition to transfer." 451 F.2d at 453. It is no surprise, then, that when the company temporarily relaxed in 1972 its no-transfer policy and its requirements that road drivers have three years line haul

experience only five ETMF city drivers in the entire Southern Conference area took, qualified for, and held the road driver job. For a city driver with a significant amount of seniority the choice must have been a difficult one indeed. The named plaintiffs testified that they were unwilling to give up their city driving seniority to transfer to road driving jobs they otherwise desired. In the strictest sense, city drivers were "locked" into city driving jobs. The discrimination that removed the possibility that a Mexican-American or Negro could obtain a line driver job when first applying to the company was thus continued and perpetuated by the no-transfer and seniority policies which prevented the city drivers from later transferring to road driver jobs.

We turn to the question whether ETMF has justified the no-transfer policy and seniority system by a showing of business necessity. The business necessity standard is strict.

> "[T]he 'business necessity' doctrine must mean more than that transfer and seniority policies serve legitimate management functions. Otherwise, all but the most blatantly discriminatory plans would be excused even if they perpetuated the effects of past discrimination. . . . Necessity connotes an irresistable demand. To be preserved, the seniority and transfer system must not only directly foster safety and efficiency of a plant, but also be essential to those goals. . . . If the legitimate ends of safety and efficiency can be served by a reasonably available alternative system with less discriminatory effects, then the present policies may not be continued.
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> . . . .

United States v. Bethlehem Steel Corp., 2 Cir. 1971, 446 F.2d 652, 662, cert. denied, 404 U.S. 959. "In other words, management convenience and business necessity are not synonymous." United States v. Jacksonville Terminal Co., 451 F.2d at 451.

The business necessity test essentially involves balancing the need for the challenged practice or policy against its discriminatory impact. The business purpose must be "sufficiently compelling to override any racial impact"; it must "effectively and efficiently" carry out its business purpose; and there must be no acceptable alternative practice. Pettway v. American Cast Iron Pipe Co., 494 F.2d at 246; Robinson v. Lorillard Corp., 4 Cir. 1971, 444 F.2d 791, 798, cert. denied, 404 U.S. 1006, 92 S.Ct. 573, 30 L.Ed.2d 655.

ETMF advances two justifications for its no-transfer policy. The company first contends that the no-transfer policy is necessary to protect employees, property, and the general public. ETMF conjures up visions of an unqualified driver "hurtling through space, if you will, at 60 miles an hour with a rig of gross vehicle weight of 72,000 [pounds]".[20] While we do not underestimate the potential dangers raised by unqualified drivers, these can be effectively diminished by carefully screening transferees.[21] See Thornton v. East Texas Motor Freight, 6 Cir. 1974, 497 F.2d 416; Bing v. Roadway Express, Inc., 444 F.2d at 691. The visions invoked by ETMF argue for continued strict qualifications for road drivers, but they are not sufficient justifications for the no-transfer policy. Second, ETMF argues that as a driver-salesman the city driver's contact with customers is an important element in customer relations. The implication is that if city drivers are permitted to transfer, ETMF might lose customers. We must reject this contention also. Loss of city drivers by transfer is no more harmful to the company's pick-up and delivery business than loss for any other reason. We agree with the

[20] Brief for Appellee East Texas Motor Freight 33, quoting testimony of H. L. Johnson, President of ETMF.

[21] ETMF has a continuous training program for road drivers, which includes on-the-job training. The training program was accelerated after the no-transfer system was temporarily modified in 1972.

district court in Sagers v. Yellow Freight System, Inc., 6 EPD at 5760:

> The city driver's unique functions and skills may justify treating it as a separate job classification from that of road driver; it does not constitute an overriding business justification for denying qualified city drivers the opportunity to transfer to the road driver position where the latter position was initially closed to them on the case of race.

ETMF portrays its seniority system as preferred by the majority of black and Mexican-American city drivers. The company relies on the vote taken at the membership meeting of Local 657 where a majority of the black and Mexican-Americans rejected a proposal to merge city and road seniority rosters. "It is obviously good personnel management", argues ETMF, to honor the preference of its Mexican-American and black employees. Furthermore, the company hints, if it had acted to merge the seniority lines, it might have been subject to legal action by those blacks and Mexican-Americans who desired dual lists, contending that the merger constituted a violation of Title VII. See Graham v. Missouri-Pacific Truck Lines, S.D.Tex.1973, [C.A 71-11-1229, Feb. 2, 1973]. Whatever the merits of this argument as it is couched by ETMF, when relief is viewed in terms other than a merger of seniority lines, such as a once-only transfer by city drivers to line jobs with seniority carryover, any force behind the contention evaporates. ETMF's explanations do not meet the question why those blacks and Mexican-Americans who have desired to transfer have not been permitted to do so and to carry over their competitive-status seniority. Nor is it explained how permitting those city drivers to carry over their seniority would hurt other city drivers or be objectionable to them.[22]

[22] ETMF might have argued that to permit city drivers to carry over their seniority to road driver jobs would have been in violation of its contract with the local unions representing the line drivers, not parties to this case. Certainly the company might have antici-

The company finally contends that the plaintiffs have nevertheless failed to establish liability, because they have not shown that any of the plaintiff class meets ETMF's road driver qualifications. The argument is in essence that if members of the plaintiff class of city drivers cannot qualify for road driver jobs, how can it be said that it is the no-transfer and seniority policies that lock them in city jobs? Rather, the argument continues, city drivers are locked in by their inability to qualify for the sought-after line driver jobs, and ETMF is under no obligation to permit city drivers to transfer to line driver jobs for which they are unqualified.

ETMF would have us reverse the burden of proof, placed firmly on the defendant by the plaintiffs' prima facie case of past hiring discrimination perpetuated by facially neutral practices and policies. We stated earlier that the burden rested on the defendants to show that the failure to hire minority persons as road drivers resulted from an absence of qualified minority drivers available. So too we think the burden must remain on the defendants to prove that the discrimination shown by the plaintiffs' prima facie case is not perpetuated by present policies in that no mi-

pated some difficulty from those quarters, for permitting carryover of seniority into road jobs would put transferees ahead of some road drivers in seniority. Neither the threat of union difficulty nor the possibility that giving transferees seniority on the road driver roster would violate ETMF's contract with the road driver locals, however, would have provided a sufficient justification for refusing to give transferees seniority. Labor unrest stemming from interference with the expectations of white was found not to amount to a business necessity in United States v. Bethlehem Steel Corp., 2 Cir. 1971, 446 F.2d 652, Robinson v. Lorillard Corp., 4 Cir. 1971, 444 F.2d 791, 798-799 and Local 189, United Papermakers and Paperworkers, 5 Cir. 1969, 416 F.2d 989. Furthermore, difficulties caused by the fact that city and road drivers were covered by different union contracts was rejected as a business necessity in Bing v. Roadway Express, Inc., 5 Cir. 1971, 444 F.2d 687, 691, and Jones v. Lee Way Motor Freight, Inc., 10 Cir. 1970, 431 F.2d 245, 250.

nority city drivers are now qualified to transfer to road driver jobs. To our knowledge no court has hinged a finding of liability in a trucking case on proof that the plaintiff class of city drivers contains those qualified to assume road driver responsibilities. That some of the class will be found qualified to transfer when the discriminatory restrictions are removed has been uniformly assumed. Winnowing the qualified from the unqualified has been left to the remedy stage; only those city drivers wishing to transfer who meet objective and nondiscriminatory standards of the company are, in the final analysis, entitled to relief.

We agree with this approach. It is not the failure to hire as a line driver every city driver who would like to transfer to the road that forms the gist of the complaint in cases like the one before us. It is the policies of the company which discourage and prevent transfer regardless of qualifications that are under attack. In sum, we are of the opinion that ETMF has the burden of proving that none of the plaintiff class was qualified to transfer to the road.[23] It was not the burden of members of the plaintiff class to establish their qualifications before a case of discrimination could be made.

We recognize that by a literal reading of ETMF's road driver requirements, none of the plaintiff class of city drivers could qualify for a road driver job. No present city driver has three years "*immediate* prior line haul experience". Nor, we assume, do many city drivers have three years experience on the road, gained at any time; the spate of trucking cases that have been marched through the federal courts give clear indication of the difficulty that blacks and Mexican-Americans have had nationwide obtaining road driver jobs with private trucking firms. We do not, however, accept the criteria ETMF employs in determin-

[23] Ezra Bierle, dock foreman at ETMF's San Antonio terminal, testified that from 1968 or 1969 the tractor-trailer equipment driven by city and road drivers has been essentially the same.

ing whom to hire as road drivers. ETMF's road driver requirements must be read against the business necessity test. That standard, always stringent, requires that we scrutinize requirements of experience when that experience has been discriminatorily denied.

Although requiring experience at a particular job is neutral and job-related on its face [see Developments in the Law-Employment Discrimination and Title VII of the Civil Rights Act of 1964, 84 Harv.L.Rev. 1109, 1145 (1971)], it is discriminatory to require experience as a prerequisite to employment when the experience is unavailable to minority persons. Blumrosen, Seniority and Equal Opportunity: A Glimmer of Hope, 23 Rut.L.Rev. 268, 309 (1969). We have in this Circuit approved a lower court's striking down an experience requirement as a criterion of membership in a labor union when "negroes were prevented from gaining such experience due to the union's racial discrimination". Local 53, International Association of Heat & Frost Insulators & Asbestos Workers v. Vogler, 5 Cir, 1969, 407 F.2d 1047, 1054-1055; see also United States v. Sheet Metal Workers, Local 36, 8 Cir. 1969, 416 F.2d 123; Dobbins v. Local 212, International Brotherhood of Electrical Workers, S.D.Ohio 1968, 292 F.Supp. 413. More significantly, we held in United States v. Jacksonville Terminal Co., 451 F.2d at 453, that where blacks were prevented by racial discrimination from utilizing their skills in the railroad industry, experience as a job criterion could not properly be confined to *railroad* experience. We do not imply that all experience requirements that act to perpetuate discrimination are illegal; only that they are illegal unless justified as a business necessity. And, as we have said, ETMF has not proved that three years' immediate line-haul experience is a business necessity for transfer of its city drivers to line-haul duties.

The defendants place great reliance on the plaintiffs' stipulation that "[t]he standards and qualifications of East Texas Motor Freight for its road drivers are not discrim-

inatory". The defendants argue that, rather than conceding only that the criteria are facially neutral, the stipulation waived any argument that the road driving requirements have a disparate impact and discriminatory effect. We do not accord the stipulation such a prominent position in this suit. As we have noted, ETMF's criteria for road drivers automatically exclude all members of the plaintiff class, including the named plaintiffs. No city driver now employed can have three years *immediate* prior line haul experience. And none of the named plaintiffs, at least, has three years experience road driving gained at any time. By the defendants' reading of the stipulation, therefore, the plaintiffs have disqualified themselves from the very relief they seek most urgently—transfer to road driver jobs. We cannot accept the interpretation that the plaintiffs, represented by counsel conceded by the defendants to be experienced Title VII attorneys, stipulated away their right to relief on the eve of trial.

In conclusion, the plaintiffs established an unrebutted prima facie case against ETMF of past hiring discrimination. It is manifest that the harmful effects of this past discrimination have been transported into the present through ETMF's facially neutral no-transfer and seniority policies. No compelling business necessity has been offered to justify ETMF's policies. In our view the district court's finding that ETMF did not discriminate against the named plaintiffs, or by implication the plaintiff class, is clearly erroneous. ETMF must be held to have violated 42 U.S.C. § 2000e-2 [24] and 42 U.S.C. § 1981.[25]

B. *Discrimination by Local 657 and the Southern Conference*

The plaintiffs contend also that Local 657 and the Southern Conference of Teamsters have acted to perpetuate the

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[24] See note 1 *supra*.
[25] See note 2 *supra*.

discrimination against the plaintiff class of city drivers by creating collective bargaining agreements that establish separate seniority rosters for road and city drivers without provision for seniority carryover for minority city drivers who desire to transfer to road jobs. Before examining the substance of this contention, we pause to outline in more detail the manner in which the collective bargaining agreement between ETMF and Local 657 came into being.

Although the collective bargaining agreement is a contract between ETMF and Local 657, it is the product of negotiation on a national and regional scale. First, there is the National Master Freight Agreement, negotiated on a nationwide basis between the Trucking Employers, Inc. and the National Over-the-Road and City Cartage policy and Negotiating Committee of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The National Negotiating Committee represents the local unions; the locals give powers of attorney to permit the National Negotiating Committee to act on their behalf. Although the Master Agreement must be ratified by the locals, ratification is generally a formality. Once the agreement is accepted by a majority of the local unions, it goes into effect and binds all locals.[28] The Master Agreement covers both city and road drivers. Then there are the Supplemental Agreements. Like the Master Agreement, although Supplemental Agreements are signed and administered by each local union at each terminal, "they are negotiated on an areawide basis by Local representatives of em-

[28] International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Constitution, art. XVI, § 4 (1966). "While there is a separate formal contract between each local union and [the defendant company] in effect, the National Master Freight Agreement is published in pamphlet form and accepted nationwide, with a blank in which the number of each individual local union is inserted." Sagers v. Yellow Freight System, Inc., N.D.Ga.1972, 58 F.R.D. 54, 57.

ployees of all unionized trucking companies in that area". United States v. Pilot Freight Carriers, Inc., M.D.N.C. 1972,54 F.R.D. 519, 521. In our case the Supplemental Agreements were negotiated by the Southern Conference of Teamsters. From these negotiations came, so far as we are now concerned, two separate agreements, one covering road drivers and one covering city drivers. The agreements provide for seniority to run from the date of entry into a particular collective bargaining unit. At the terminal level, these separate agreements are administered by union locals. In the case before us, the city drivers for ETMF in San Antonio are represented by Local 657. Local 657 is an integrated union. Since 1952 a majority of the employees working for ETMF within the jurisdiction and membership of Local 657 have been blacks and Mexican-Americans.

As we mentioned earlier, it is the creation and maintenance of separate seniority rosters for road and city drivers without provision for seniority carryover by minority city drivers that forms the crux of the complaint against the union defendants. We agree with the plaintiffs that the discrimination against the black and Mexican-American city drivers that closed out the possibility of their being hired originally as road drivers was continued and reinforced by union action and inaction. For their role in continuing the effect of this discrimination the union defendants must share the blame and the liability.

We recognize that the prima facie case against ETMF for discrimination in the hiring of road drivers falls only indirectly against the union defendants. The company has always exercised full responsibility for hiring; the unions have never exercised any. We have discussed how the inability of city drivers to carry over their competitive-status seniority formed an important link in the chain that "locked" minority drivers into city driver jobs. Of this the unions were not unaware. Local 657 concedes in its brief that the "most important thing to an employee working

under a collective bargaining agreement, except perhaps for wage rates, is his seniority".[27]

The plaintiffs' prima facie case of hiring discrimination, and proof that the seniority system, a creature of the collective bargaining agreement, transmitted the discrimination into the present, shifted the burden to the defendant unions to show that the present discriminatory effects were unavoidable, that is, required as a business necessity.

The primary justification offered by the union defendants is that in contributing to the establishment of separate seniority rosters they were merely following the desires of the majority of their black and Mexican-American members. Once again the defendants rely on the post-trial defeat by members of Local 657 of a proposal to merge city and road driver contracts as an indication of the preferences of a majority of Mexican-American and black city drivers. As we mentioned earlier, the degree to which the vote should be taken to represent the true desires of members of the plaintiff class is uncertain. In any event, the unions perceive their responsibility too narrowly. There are established ways to eliminate the lock-in effect of separate seniority rosters without merging rosters and jeopardizing the seniority rights of those city drivers who remain in their positions. Most obviously, seniority carryover can be allowed on a one-time-only basis for qualified minority city drivers who wish to transfer to the road. See, e. g., Thornton v. East Texas Motor Freight, supra; Bing v. Roadway Express, Inc., 485 F.2d 441; United States v. Central Motor Lines, Inc., W.D.N.C.1971, 338 F.Supp. 532. No reciprocal arrangement for road drivers would have been necessary, because they have suffered no discrimination. See United States v. Chesapeake & Ohio Ry. Co., 4 Cir. 1972, 471 F.2d 582, 593. We believe a one-time-only transfer with seniority carryover was an alternative that could have

[27] Brief for Appellee Teamsters Local Union 657, at 16.

eased the discriminatory effects of the separate seniority lists without injury to any minority city driver. This reasonable alternative vitiates the business necessity defense. See United States v. St. Louis-San Francisco Railway Co., 464 F.2d 301 at 308; Robinson v. Lorrillard Corp., 444 F.2d at 798.

For their role in establishing separate seniority rosters that failed to make allowance for minority city drivers who had been discriminatorily relegated to city driver jobs, Local 657 and the Southern Conference must be held accountable. They have violated 42 U.S.C. § 2000e-2 and 42 U.S.C. § 1981. The district court's finding to the countrary is clearly erroneous.

IV.

Remedy

Because the district court concluded that the defendants were not liable under Title VII or 42 U.S.C. § 1981, it never reached the question of remedy. We remand for the court's consideration of this issue. The district courts have broad remedial powers to eliminate the present effects of past discrimination, and a large measure of discretion in modeling a decree. Local 53, International Heat & Frost Insulators & Asbestos Workers v. Vogler, 407 F.2d at 1052. The discretion is not unbridled, however, and we provide the boundaries within which the decree in this case must be drawn.

A. *Transfer*

We have long subscribed in this circuit to the theory that those who suffer discrimination under Title VII must be permitted to take their "rightful place" when job openings develop. As we said in Local 189, United Papermakers & Paperworkers v. United States, 416 F.2d at 988:

> The Act should be construed to prohibit the *future* awarding of vacant jobs on the basis on a seniority

> system that "locks in" prior racial classification. White incumbent workers should not be bumped out of their *present* positions by Negroes with greater plant seniority; plant seniority should be asserted only with respect to new job openings. This solution accords with the purpose and history of the legislation.

See Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 Harv.L.Rev. 1260 (1967). Thus, black and Mexican-American city drivers, many of whom would now be road drivers but for the discrimination of the defendants, must be given an opportunity to transfer to the road as road driving job openings develop.

ETMF need not permit unqualified plaintiffs to transfer to the road, but in determining who is qualified ETMF must use criteria that either have no disparate impact along the lines of race or national origin, or that can be justified as a business necessity. We have already stated that the requirement of three years prior road haul experience must give way. Because road driving experience has been denied to blacks and Mexican-Americans as a class, and because ETMF has not justified the experience requirement as essential, it may not be confined to road driving when to do so would discriminate against members of the plaintiff class. ETMF having failed to prove that three years' line-haul experience is a business necessity for transfer, each city driver must be considered to meet the experience requirement by showing three years of city driving on equipment similar to that used over the road.

The plaintiffs argue that, because not all trucking companies require three years experience, we should also reduce the number of years experience required. See, e. g., Bing v. Roadway Express, Inc., 485 F.2d 441 (1 year); Sayers v. Yellow Freight System, Inc., N.D.Ga.1973, 6 EPD § 8885 (2 years). Once the requirement of *road* expe-

rience requirement is removed, however, the experience requirement is not only *facially neutral*, it is *neutral in effect*. Thus it need not be justified as a business necessity. Congress did not intend that Title VII lead to uniform hiring practices across an industry. So long as hiring policies do not discriminate, Title VII does not require their modification.

We hold, not that all minority city drivers with three years experience at city driving must be permitted to transfer, but only that they may not be excluded unless they fail to meet other qualifications that either have no disparate impact along racial or national-origin lines or that can be justified as essential for safety or efficiency. On remand the district court should monitor carefully the criteria used by ETMF to prevent minority city drivers from transferring to line driving jobs.[28]

To permit minority city drivers the opportunity to return to their "rightful place" in the road driver ranks, the plaintiff class should be divided into sub-classes, one for each terminal in the Texas-Southern Conference area where ETMF domiciles road drivers. ETMF's system of terminal-based responsibility for hiring and of domiciling road drivers only at certain terminals is not discriminatory, and we leave these practices intact. Still, we are not blind to the recognized mobility of today's minorities. See, e. g., Johnson v. Goodyear Tire & Rubber Co., 491 F.2d 1364 at 1371. We may not assume that blacks and Mexican-Americans who became city drivers at a terminal where road drivers were not domiciled would not have moved to

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[28] While the in-cab road test is undoubtedly a legitimate method for determining the qualifications of a driver, it may be subject to abuse unless the chances of a subjective judgment by the tester are minimized. See, e. g., United States v. Central Motor Lines, Inc., W.D.N.C.1971, 338 F.Supp 532, 563. Moreover, a potential transferee who performs inadequately on this test should not be disqualified unless he cannot be expected to improve sufficiently given normal training.

a terminal where road drivers were domiciled had a road driver job been open to them. Therefore, those members of the class who now work in terminals where road drivers are not domiciled must be permitted to join the sub-class of their choice. In other words, they must be provided an opportunity to become road drivers at one of the terminals where ETMF domiciles road drivers. Black and Mexican-American city drivers at terminals where road drivers are domiciled should be placed in the sub-class corresponding to that terminal. We may assume that they are already at the terminal they would have chosen had road driver jobs been open to them in the past.

Within each sub-class, minority city drivers should be permitted the opportunity to transfer as jobs become vacant at that terminal. The minority city drivers should be ranged in the various sub-classes according to their "qualification dates", described below. The ranking should determine the order in which opportunities to transfer are awarded.

Over objection at trial, the district court admitted evidence pertaining to the qualifications of the named plaintiffs to become road drivers. The court then found that Rodriguez, Perez, and Herrera were unqualified. In light of the fact that the company admitted by stipulation that it did not consider any of the plaintiffs for employment as road drivers, we believe that the district court's action was premature. The question with regard to the named plaintiffs was not whether they were qualified, but whether ETMF's failure to consider their application was discriminatory. On remand, the district court should require ETMF to consider the plaintiffs for road driver positions as vacancies occur. The court should supervise carefully the standards used by ETMF to determine whether the plaintiffs are in fact qualified, and should view with particular skepticism and reliance by ETMF on disciplinary actions taken by the company after the plaintiffs initiated their actions with the EEOC.

B. *Seniority Carryover*

Members of the plaintiff class who transfer to the road must be permitted to take with them seniority for job bidding and lay off purposes. The question is "how much?" In general terms, the answer is that "how much seniority the transferee deserves should be determined by the date he would have transferred but for his employer's discrimination". Bing v. Roadway Express, Inc., 485 F.2d at 450. There is no way to arrive at such a date with exactitude, however, and some method for approximation is necessary.

In *Bing* we approved a "qualification date" formulation —the date a transferee had the experience necessary to qualify him for a road driving job. 485 F.2d at 451.[29] The *Bing* test represents a compromise between the trial court's determination in that case that seniority rights should date from when the transferees applied to become road drivers, and the remedy requested by the Government as amicus, that transferees should carry over full company seniority. This Court felt, on the one hand, that the application-date formulation of the district court failed "to account for the realities of entrenched employment discrimination", 485 F.

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[29] In this case the qualification date of a member of the plaintiff class of city drivers is the date when, in the employ of ETMF, the individual first accumulated three years combined road and city driving experience gained either with ETMF or with other organizations. If the individual already possessed such experience when hired by ETMF, of course, his qualification date will be the same as his company seniority date.

Similar to *Bing*, the straight qualification-date calculation must be modified to take account of that period from October 1969 to March 1971, during which ETMF did not hire any road drivers. The seniority of any member of the plaintiff class whose qualification date falls within the period when ETMF did no hiring must date from March 1970, when ETMF resumed hiring.

2d at 451; the company defendant's discriminatory practices discouraged city drivers from applying. On the other hand, the Government's theory of full seniority carryover would have given superseniority to those transferees who were not qualified to be road drivers before they began working for the defendant. Until they were qualified, "discrimination could not have blocked their employment as road drivers". *Id.*

The *Bing* qualification-date formulation was rejected recently by a divided panel of the Sixth Circuit. In Thornton v. East Texas Motor Freight, 6 Cir. 1974, 497 F.2d 416, a case involving the same trucking company that is a defendant in the instant case, the Court affirmed the district court's grant of seniority carryover dating from six months after the transferee requested transfer or filed a charge with the EEOC. Although the Court distinguished *Bing* on the grounds that more charges were filed with the EEOC in *Thornton* (thus apparently showing that "silence and futility of protest" were less the norm), the Court also criticized the *Bing* rationale: "The rationale in *Bing* was that silence might be caused by a belief in the futility of a transfer request. That may be true, but also it may be caused by no desire to transfer." 497 F.2d at 421. The Court also noted that "there is something to be said for rewarding those drivers who protest and help to bring rights to a group of employees who have been victims of discrimination". 497 F.2d 420.

We are unpersuaded by these considerations. First, we think that the best indication whether a person desired transfer to the road in the past is reflected in whether he desires transfer now, so long as we do not create special incentives or disincentives that skew the balance. The qualification-date test of *Bing*, by taking into account experience requirements on the one hand and the effects of entrenched discrimination on the other, is as neutral as any we can envision. Second, the concern showed by the *Thornton* major-

ity for rewarding those who help to bring rights to a group of employees was adequately answered by Judge Phillips, dissenting in part: "Any such 'reward' should not be at the expense of the other victims of the discrimination. Title VII was enacted to protect *all* employees from unlawful discrimination. This is especially true where the discrimination intimidated the employees to such an extent that they felt it would be futile to request a transfer." 497 F.2d at 428. In short, we reaffirm the qualification-date formulation of Bing.[30]

C. *Back Pay*

The district court should consider the question of back pay, with particular reference to the guidelines laid down in Pettway v. American Cast Iron Pipe Co., 494 F.2d at 251-263; Johnson v. Goodyear Tire & Rubber Co., 491 F.2d at 1375-1380; and Bing v. Roadway Express, Inc., 485 F.2d at 452-455. In these cases the criteria for the award of back pay, and the method of calculation, have been thoroughly analyzed. The most difficult question remaining before the district court will be the apportionment of the burden of paying any back pay awards among the three defendants. Consistent with the broad discretion awarded the district

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[30] This Circuit recently required that transferees in a trucking case similar to this one be permitted use of "full company seniority" in their new positions. Franks v. Bowman Transportation Co., 5 Cir. 1974, 495 F.2d 398, 416. The Court emphasized, however, a critical difference between that case and *Bing*: "In [*Bing*], Roadway had a flat requirement of one year's experience for road drivers, so that the qualification date was easily calculable. To allow the use of company seniority before that date would have placed the discriminatee in a better position than he could have achieved without the discrimination. In this case, by contrast, Bowman had no rigid one-year experience requirement. It sometimes accepted OTR [over-the-road] trainees with little or no prior driving experience." *Id.* 495 F.2d at 417 n. 17. As in *Bing*, the qualification date in the instant case is easily calculable. The three-years experience requirement has been rigidly adhered to.

court on this question in Johnson v. Goodyear Tire & Rubber Co., 491 F.2d at 1382, we intimate no view to this question.

V.

The Consent Decree

On June 29, 1972, the United States filed a "pattern and practice" [31] suit in the Northern District of Texas against ETMF, the Teamsters International, and the International Association of Machinists and Aerospace workers, challenging nationwide essentially the same practices at issue in the instant private class action. February 19, 1974, approximately one month before we heard oral argument in the case before us, the parties to the Government's suit entered into a consent decree. The decree covered:

> A. Such black or Spanish-surnamed city drivers, hostlers, checkers and garage employees who are domiciled at a terminal where road drivers are presently domiciled or where road drivers have been, since July 2, 1965, domiciled under either ETMF or a predecessor company.
>
> B. Such persons who are incumbent city employees employed at a non-road driving terminal who have, since July 2, 1965, indicated a desire to transfer to the road.[32]

In addition to setting some standards for hiring and establishing hiring ratios, the decree established "transfer procedures". City drivers were to be afforded 30 days "to indicate an interest in transferring to the road driver classification at the terminal in which he is employed (if that terminal has an over-the-road operation) or at a terminal within

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[31] See 42 U.S.C. § 2000e-6.

[32] The decree also covered some named individuals.

the job market, or to a terminal of his choice (if the terminal at which he is employed has no over-the-road operation) . . . ." The issue of seniority rights was left for later resolution. The decree provided also that ETMF was to furnish a total of $175,000 as back pay compensation for members of the affected class nationwide. Persons accepting a portion of this settlement were to sign a release "stating that such designated portion is accepted in full and final settlement of all claims for monetary compensation, back pay or any other type of relief against ETMF or any predecessor corporation based upon any pending litigation or other alleged discriminatory actions because of race or national origin occurring prior to the date such release is signed".

A judgment by consent binds the parties and those in privity with them. Seaboard Air Line Railroad Co. v. George F. McCourt Trucking, Inc., 5 Cir. 1960, 277 F.2d 593. Members of the plaintiff class in the present action were not parties to the Government's suit, nor do they have interests in privity with the Government. See Williamson v. Bethlehem Steel Corp., 2 Cir. 1972, 468 F.2d 1201, 1203, cert. denied, 411 U.S. 931, 93 S.St. 1893, 36 L.Ed. 390; *cf.* Trbovich v. United Mine Workers of America, 1972, 404 U.S. 528, 92 S.Ct. 630, 30 L.Ed.2d 686.

We hold, therefore, that the consent decree does not operate as collateral estoppel to prohibit any members of the plaintiff class from participating in relief in this case. See also IB J. Moore, Federal Practice ¶ 0.411 [1] (2d ed. 1974). Those members of the plaintiff class who accept compensation under the consent decree and sign a release, of course, are bound by the terms of the release. But no other members of the plaintiff class lose any right to relief in the instant case.

We have chosen not to accord the consent decree any great weight in our outline of the relief to be awarded by the district court. First, the "affected class" awarded relief

in the consent decree does not encompass an important segment of the plaintiffs' class here—black and Mexican-American city drivers at "non-road driving" terminals in the Texas-Southern Conference area who have not "indicated a desire to transfer to the road." The Government's remedy is thus based implicitly on the theory, one we reject, that the acceptance by a black or Mexican-American of a job as a city driver at a city-only terminal, at a time when no road positions were open to him, signifies a lack of interest in a road driver position. Rather, we have taken cognizance of both the mobility of the modern work force and the reality of entrenched employment discrimination that makes a request to transfer a futile gesture. Second, private plaintiffs in class actions under Title VII and the United States in "pattern and practice" suits protect different interests: the Government protects general economic interests in addition to the rights of minorities; private plaintiffs represent only the interests of minority group members. United States v. Local No. 3, Operating Engineers, N.D.Calif.1972, 4 FEP Cases 1088, 1093. While the Government may be willing to compromise in order to gain prompt, and perhaps nationwide, relief, private plaintiffs, more concerned with full compensation for class members, may be willing to hold out for full restitution. Finally, we cannot ignore the possibility that, if we permit negotiated settlements by the Government to control the relief accorded in pending private actions against the same plaintiffs, private actions will be significantly discouraged. Such a result would have a deleterious effect on enforcement of Title VII and would not, in our opinion, be consistent with the intent of Congress.

We are not unmindful of the argument that by going beyond the relief awarded by the consent decree we may discourage defendants in "pattern and practice" suits from entering into settlements with the United States when a Title VII private class action is proceeding simultaneously against the same defendant. The court in *Local No. 3, Operating Engineers* expressed a similar concern: "If the United States cannot offer a final settlement in cases where a pattern and practice suit is proceeding simultaneously with a class action, then the Government's bargaining power will be severely reduced". 4 FEP Cases at 1093. Our worries are eased, however, as were those of the court in *Local No. 3, Operating Engineers,* by the Government's support of the broad class relief outlined in the opinion. As amicus curiae in this case, the EEOC has filed a post-argument brief arguing that "those who elect not to take under the consent decree, as well as those who are not covered by the decree, should have an opportunity to pursue vindication of their rights through this private litigation."[33]

The case is reversed and remanded for proceedings consistent with this opinion.

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[33] Supplemental Brief for the United States Equal Employment Opportunity Commission as Amicus Curiae 4.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
August 18, 1975
TO ALL COUNSEL OF RECORD
No. 73-2801—Jesse Rodriguez et al. vs. East Texas Motor Freight, et al

Dear Counsel:

This is to advise that an order has this day been entered denying the petition(s)* for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
EDWARD W. WADSWORTH, *Clerk*
by /s/ CLASE F. SACHS
Deputy Clerk

cc: Mr. Jim Heidelberg
Ms. Debra Millenson
Mr. Theo F. Weiss
Messrs. Richard C. Hotvedt
Harry A. Rissetto
Messrs. George E. Seay
William Strock
Messrs. Edward W. Penshorn
Bradford F. Miller
Messrs. G. Wm. Baab
L.N.D. Wells, Jr.
Hall Gillespie

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* Filed by Local Union 657, Southern Conference of Teamsters and East Texas Motor Freight.

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[Transcript of Proceedings Held before the United States District Court for the Western District of Texas, San Antonio Division, on January 29, 1973]

* * * * * * * * * *

MR. WEISS: I think all parties are ready. All parties are in court and represented by counsel and we are all ready. And during the recess we have been able to work out some stipulations.

All of the stipulated facts are subject to objection by any of the parties as to relevancy or other legal grounds.

The parties stipulated (I) that the plaintiffs were employed at the San Antonio Terminal of East Texas Motor Freight without regard to their race, color or national origin.

THE COURT: That means, Mr. Weiss, the original employment?

MR. WEISS: Yes, sir, that's right, Your Honor. (2) The no-transfer rule of East Texas Motor Freight, that is, no-transfer between classifications which would include no-transfer for the city to road or road to city has been uniformly applied [6] without regard to race, color or national origin.

(3) The standards and qualifications of East Texas Motor Freight for road drivers are not discriminatory.

(4) Except for one road driver employed by Valley Copper State Freight Line who was transferred from San Antonio immediately after the merger of Valley Copper State and East Texas Motor Freight, East Texas has never had any road drivers domiciled in San Antonio or at the San Antonio Terminal.

(5) That prior and subsequent to the effective date of Title 7 of the 1964 Civil Rights Act to the date that

Jesse Rodriguez filed the charge of discrimination with the Equal Employment Opportunity Commission, East Texas Motor Freight had never employed a Negro or Mexican-American as a line driver in the State of Texas covered by the Southern Conference Area Supplemental Agreement.

(6) Except to being received and filed locally by the then terminal manager Sager in August 1970, East Texas Motor Freight never considered the written applications for employment as road drivers of the three plaintiffs and Trinidad Gomez. Such applications were transmitted to the Dallas Corporate Office of East Texas Motor Freight subsequently to the filing of the EEOC charges involved herein.

Now, (7) is a delineation or a statement of the contentions being made by the plaintiffs in this case, narrowed down, as we did in the other cases.

[7] (7) The claim of discrimination of the plaintiffs is solely based upon the fact that after their original employment they have been "locked in" to the lower paying job of a city driver and denied the job as a line driver because of:

(a) The maintenance of separate seniority rosters for city drivers and line drivers.

(b) The fact that any city drivers regardless of their race, if they transferred from city driver classification to road driver classification loses his accumulated city seniority.

(c) The defendant, East Texas Motor Freight discouraged enquiries from plaintiffs concerning the qualifications and/or availability of line driver jobs.

(d) The fact that the defendant, East Texas Motor Freight, has always employed Anglo-White applicants as road drivers.

(e) That the companies policy in practice for recruiting line or road drivers has been based to a great extent on a word-of-mouth system since the companies line driver and supervisory terminal personnel are almost exclusively Anglo-White, such practice has continued the alledged illegal exclusion of Mexican-American and Negroes as road drivers.

(8) That the only issue presently before the court pertaining to the company is whether the failure of the defendant, East Texas Motor Freight, to consider plaintiff's line [8] driver applications constituted a violation of Title 7 and 42 USC Section 1981.

Have I covered everything? I believe that's it.

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[10] MR. BAAB: Your Honor, this is a stipulation between plaintiffs and the defendant Southern Conference entered into as a result of a request for admissions made by the plaintiff which I will read into the record now.

THE COURT: You may proceed to do so.

MR. BAAB: It is a stipulation between the parties which I gave you that the National Master Freight Agreement covering over-the-road and local cartage employees of private [11] common contractors and local cartage carriers and supplemental agreements thereto for the period April 1, 1970 to June 30, 1973, constitute the collective bargaining agreements governing the terms and conditions of employment of defendant East Texas Motor Freights city driver and road driver personnel respectively within the area of the State of Texas, within the jurisdiction of the Southern Conference of Teamsters.

Copies of both agreements are listed as plaintiff's exhibits 15 and 16.

The afore-said agreements are contracts between the defendant, East Texas Motor Freight and the various local

Teamsters unions who are in fact signatory parties to said agreements. Negotiations leading to the adoption of the Master Freight Agreemnt were conducted on behalf of the local unions by negotiating committees designated by the International Brotherhood of Teamsters and composed of Teamster Union officials affiliated with the Intertional Brotherhood of Teamsters or Southern Conference or various local unions.

Supplemental agreements were negotiated by negotiating committees consisting of representatives of the International Brotherhood of Teamsters or Southern Conference of Teamsters or local unions within the jurisdiction of the agreement. The local teamster unions having members within the respective bargaining unit or units conveyed powers-of-attorney to the negotiating committee or committees. After negotiations, the [12] proposed collective bargaining agreements were submitted to the affected Teamster local unions for acceptance or rejection by the local union members. Upon acceptance by the local union members, the agreements are printed, one covering road drivers and one covering city drivers. Contracts are signed by a representative of the local union and the employer or its representative.

The parties reserve the right to submit further evidence with respect to the above matters. Again, that's a stipulation between the Southern Conference of Teamsters and and the plaintiffs.

THE COURT: I understand, Mr. Baab. That stipulation will be made officially a part of the record in the case. Now, are there any further stipulations, gentlemen, that you would like to bring to the attention of the court at this time.

MR. HEIDELBERG: Your Honor, this would not be a stipulation, but the contention of the plaintiffs with regard to the Southern Conference and the local union are incor-

porated within the pretrial order and I would make reference to that.

THE COURT: I'm going to enter all of the pretrial orders and make them a part of the record in this case. And all of the proposed pretrial orders which set forth the contention of the parties, the disputed issues of fact and law [13] and the various requested findings of fact and the like will be made into one pretrial order. In other words, I'm going to approve all of the proposed pretrial orders and I will make that as my pretrial order.

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[21]

Jesse Rodriguez

called as a witness in his own behalf, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. HEIDELBERG:

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[22] Q. Do you recall the initial date of your employment? A. September 65.

Q. What position did you take when you were first employed by East Texas Motor Freight? A. City driver.

Q. Have you ever been a member of the union? A. Prior to that?

Q. At any time. A. No. I have never been a member of any union prior to joining Local 657.

Q. When did you join Local 657? A. I believe it was about April 65.

Q. Are you still a member of Local 657? A. Yes, I am.

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[24] Q. Mr. Rodriguez, have you ever made application for any other position at East Texas Motor Freight? A.

Yes, I have. I inquired about the possibilities of becoming a line driver with East Texas Motor Freight.

Q. Do you remember when that was, Mr. Rodriguez? A. Are you asking me when I first applied in writing or—

Q. Yes, the first time you applied in writing. A. That would be August 1970.

MR. HEIDELBERG: May I approach the witness, Your Honor?

THE COURT: Yes, you may, Mr. Heidelberg.

Q. (By Mr. Heidelberg:) Mr. Rodriguez, let me show you what has been marked as Plaintiff's Exhibit 5 and ask you whether or not you can identify that particular document. A. Yes, I can.

Q. And what is that? A. This is a letter that Mr. Sager had me sign in his office that they would consider me an employee as a line driver.

Q. If you know, Mr. Rodriguez, could you explain the circumstances that led up to Mr. Sager giving you this line drivers application? A. The only way I can explain it is that Wes Sager called me in his office one day and told me that Ezra Beierle [25] an employee at ETMF in the management division had told him that I was interested in a line drivers position, and therefore he was calling me into the office to sign this letter.

Q. Did Mr. Sager say anything to you with respect to this particular letter? A. No, sir. That was all there was to it, that he wanted me to sign it and he would keep a copy and let me have a copy of it.

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[26] Q. Following the filing of your application, has the company contacted you with respect to this particular application? A. You said prior?

Q. After you filed your application has the company contacted you with respect to the application? A. No, sir, they have not contacted me.

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[27] Q. (By Mr. Heidelberg:) Have you ever seen a Negroe or a black line driver come into the terminal at San Antonio? A. No, sir, I have not.

Q. Have you ever seen a Mexican-American line driver for ETMF come into the terminal, drive into the terminal at San Antonio? A. No, sir, I have not.

Q. Mr. Rodriguez, prior to your filing this lawsuit, [28] did you take any other action? A. Prior to filing this lawsuit?

Q. Yes. A. Yes, I contacted my local and told them I was interested in going on the road as a line driver, and also the company.

Q. Which individual with the local did you contact? A. I believe the first time, it was at a special meeting at Local 657 Hall. And it was brought up to the President's attention, Mr. Ray Shafer.

Q. Could you describe the circumstances that surrounded that particular event? A. Well, during that time it was known that we were to merge with VCS. And there were other things to be brought up also at that meeting. And this was one of the things that was brought up, the line drivers.

Q. Is it your testimony that you, yourself, mentioned it to Mr. Shafer? A. Yes.

Q. Exactly what did you say to him? A. The exact words, I just can't remember the exact words, but I do remember that I asked—I told him I was interested in going on the road after we merged.

Q. Was there any other occasion in which you mentioned this same topic to Mr. Shafer? [29] A. I believe we ran into each other there at the dock, at the East Texas dock on two different occasions. And I asked him if he had heard anything or done anything about it. And he said he would look into it.

Q. He said he would look it? A. Yes.

Q. Did that happen at both situations? A. The road

driver, that's what I was asking him about. And he said he would look into it.

Q. The first time you spoke to Mr. Shafer at the Hall, what response did you receive from Mr. Shafer? A. He said he would check into it.

Q. The first time you spoke to Mr. Shafer at the Hall, what response did you receive from Mr. Shafer? A. He said he would check into it.

Q. Your testimony is that you contacted Representatives of the company. Could you describe to the court the circumstances surrounding those particular requests? A. Well, when I did contact the company officials, we had merged by that time or we were about to merge about that time. I asked Ezra Beierle if I could get on the road after we merged.

Q. When did you ask Mr. Beierle this? A. The exact date of the month I don't quite remember. I think it might have been around February 1970.

Q. Do you remember the exact language that you used in your questioning to Mr. Beierle? A. Not the exact language, but I remember asking him [30] or telling him that I wanted to go on the road after we merged and there was a possibility then.

Q. What was Mr. Beierle's response to that? A. That he didn't—I can't remember exactly what he said either, but it had something to do—that is, he didn't know what they were going to do yet.

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CROSS EXAMINATION,

BY THE COURT:

Q. Let me ask you this, Mr. Rodriguez: You testified, and correct me if I'm wrong, the basic text of your testimony is that the purpose of keeping you here in town as a city driver was to keep the Mexican-American and Negro

in the cities and not let them get out on the road and receive higher paying line jobs. That is your contention, is that right? A. Yes.

Q. Keep the blacks and Mexican-Americans confined to the cities. That's what you said, isn't that true? A. That's right.

Q. You say "They." Who is they? Who do you say is responsible for that? A. Well, I believe—

Q. Is it the local or the international parent union or is it the employer? Who do you say is responsible for this [31] and what facts do you have to show that this was done by one or more of these defendants to prejudice you because of your race? A. Well sir, I believe that—when I say "They", I include the company and the local that represents me because they do negotiate these two separate contracts.

Q. I realize that the evidence is such that there are no Mexican-American line drivers or black line drivers perhaps and if there are, the number is disproportionate to the population here locally. But what facts do you have that would show that this was done, that you were refused the right to move from a city driver to an over-the-road driver merely because, merely because of and solely because you are Mexican-American? A. The only proof and facts that I have are the ones pertaining to myself. The opportunity that was denied me.

Q. Just because the opportunity was denied you is not necessarily enough. You have got to also establish that it was done because of some racial discrimination. You said that, but what are the facts to support you? A. Well, I believe that the statement you made, that in and of itself is a fact. The numbers are disproportionate as to the numbers of population here in the state, this part of the state. That in and of itself is a factor.

Q. In other words, you are relying strictly on the numbers? [32] A. Yes, sir.

THE COURT: All right, you may cross examine.

CROSS EXAMINATION

BY MR. WEISS:

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[33] Q. You have never had any experience in over-the-road driving, have you? A. Yes, I have.

Q. What experience have you had? A. I drove on the road for Dentler Fax from here to Houston.

Q. And what kind of equipment? A. It was a 45 foot trailer and a single axle.

[34] Q. And that was while you were on lay-off status from East Texas, is that right? A. Yes, sir.

Q. And when was that? A. When was the time that I started working at Dentler?

Q. Yes. A. Or at the time I was layed off?

Q. Well, how long were you on lay-off status? A. I can't remember the exact time, but something around 14 to 16 months.

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Q. I mean, that's correct, isn't it? You have never had over the road experience for a truck line? A. No, sir, I haven't.

[35] Q. All right, sir. All right. Now, you went to work in September 1965. And in October, you had an accident. That's correct isn't it? Do you remember the accident you had a short time after you went to work?

MR. HEIDELBERG: Your Honor, I have my objection on this line of testimony, is that correct?

THE COURT: Yes, you have. I'll give you a running objection so that you won't have to rise.

MR. HEIDELBERG: Yes, Your Honor.

THE COURT: You have a running objection to this entire line of testimony. I will overrule your objection.

Q. (By Mr. Weiss:) Will you tell us about that, Mr. Rodriguez? A. This was in October, did you say, sir?

Q. October 9, 1965. Well, you won't deny that you had an accident, will you? A. No, I won't deny it.

Q. And the details of the accident of course appear in these exhibits which have already been introduced in evidence. A. Yes, sir.

Q. Now, most of your experience as a city driver has been driving bob-tail trucks? A. Yes, sir.

Q. I think you told us when your deposition was taken that 65 percent of your time you drive these small bob-tail [36] trucks around town? A. Yes, sir.

Q. And in March 1966 you injured yourself on the job. You had a Workman's Compensation claim based upon an injury that you had. A. Yes, sir.

Q. All right. Then in May, May 19, 1966, and I'm not going into these in detail because they do appear in the record, you had an accident. A. Yes, sir.

Q. Mr. Beierle who is the Assistant Terminal Manager criticized you for—he cautioned you about being careless, isn't that correct? A. No, sir, that is not correct.

Q. You deny that he did that? A. Yes, sir.

Q. Then in July 1969, July 1969 you had another injury. You sprained your wrist? A. Yes, sir.

Q. Then in September 1970 you backed your bob-tail truck into a display case, isn't that correct? A. Yes, sir.

Q. You claimed that your foot slipped ff the brake and hit the accelerator? A. Yes, sir.

[37] Q. And then in July 1971 you received a warning letter because of an incident that occured over at the Universal Bookbindery? A. Yes, sir.

Q. And the company's investigation and the facts revealed by that investigation as far as the company was concerned is revealed in the warning letter of August 9, 1971 which appears in the record. That's correct, isn't it? A. Yes, sir.

Q. And according to Mr. Asbury who was the Terminal Manager at the time, Universal Bookbindery gave instructions to the company that you were not to make any more

deliveries over there, isn't that correct? A. I don't know that as a fact.

Q. Okay. But you know that's what Mr. Asbury's letter said, isn't that correct? A. Yes, sir.

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[45]

Modesto Herrera

Called as a witness by the plaintiffs, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. HEIDELBERG:

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Q. Mr. Herrera, how long have you worked for ETMF? A. Regular, since May 3, 1965. Prior to that I worked casual in 1964.

Q. What type of work were you doing when you were [46] initially employed by ETMF? A. Most of the time I was driving in the city. Sometimes I would do dock work and check freight.

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Q. What type of equipment have you handled during your work experience with East Texas Motor Freight? A. Well, I have driven a truck and trailer. They told me I was the best truck and trailer there. That's why they wouldn't give me a bob-tail until I complained around 1969 or something like that. I told them that the junior men would have to learn how to drive a trailer, and give me a break driving a bob-tail. They they started giving me a bob-tail sometimes, and then back to a trailer. Most of the time truck and trailer.

Q. Who was the individual that told you this? A. Mr. Beierle.

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[47] Q. Have you made application for any other position with East Texas Motor Freight other than your initial application for employment? A. I made a written application to Mr. Sager in August of 1970 for a line driver job.

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Q. (By Mr. Heidelberg:) Did the company ever correspond [48] with you concerning this application? A. No one has ever approached me with regard to my application for the road.

Q. Can you tell the court the circumstances that surrounded your filing this application with Mr. Sager? A. I found out that they didn't have no Mexican-American line drivers and blacks. I always wanted to be a line driver. I always wanted to have an opportunity to be a line driver because they made more money. And since I was there in 64, I approached Mr. McCracken about being a line driver and also some of the other officials there. But nothing was done.

Q. Did you approach him in written or oral fashion? A. It was oral. Everything was oral.

Q. Can you remember the times you approached Mr. McCracken, Mr. Herrera? A. I believe it was in April 1965 when I talked to Mr. McCracken to tell him that I wanted to be a line driver, what was the procedure for me to be a line driver for East Texas Motor Freight.

Q. And who else did you speak to? A. Mr. Asbury in the early part of 65 and the later part of 65.

Q. You say Mr. Asbury? A. Mr. Asbury.

Q. What was your reason for filing this lawsuit? [49] A. Because I made an application, I have asked for a road drivers job since 65. Then in 1970 I made out a written application for the road. And since I didn't have no response from the company or any other official from ETMF, I felt that they were discriminating against me, that they didn't want me to be a line driver.

Q. Have you ever seen a Mexican-American line driver come in to the ETMF Terminal? A. No, sir.

Q. Have you ever seen a black or Negro line driver come in to the ETMF Terminal? A. No, sir.

Q. Did you contact the union, your local union with respect to obtaining a line drivers job? A. Yes, sir. I talked to the President of Local 657.

Q. Who was that at that time? A. Mr. Ray Shafer.

Q. And when was it, if you can remember? A. The exact dates—I don't recall, but I talked to—I got up in one of the meetings when I found out that ETMF Freight System was going to buy VCS, and VCS had road drivers domiciled here in San Antonio, and I asked, I got up there in the meeting and told Mr. Shafer I would want to be a line driver, and if I had an opportunity I would like to get one.

Q. What, if you can remember, did Mr. Shafer say in [50] response to your request? A. Well, he said, as I recollect he said "Just wait until we purchase VCS and then we will see what we can do about it."

Q. Did you ever have any other conversation with Mr. Shafer concerning the obtaining of a road drivers job? A. A couple of other times.

Q. Tell the court about those instances. A. I was there in the Union Hall and I saw Mr. Shafer. He was there in the office, and nobody was in there. And I went in to talk to him. I always wanted to be a line driver and I said "maybe he can help me." So I asked him if he could help get me a road job.

Q. What did Mr. Shafer say to you at that time? A. He said that we had two different contracts, one for the city and one for the road. I couldn't be transferred.

Q. You mentioned I believe that you spoke to him with reference to this matter on two occasions. Do you remember the second time? A. Dates, I don't recall, but it was the same place, in his office.

Q. And what did you say to Mr. Shafer at that time? A. I was determined that I wanted to see if he could help me get a line drivers job.

Q. What was his answer? [51] A. Same thing, that they had two different contracts, one for the city and one for the road and I couldn't transfer.

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[55] Q. All right. Now, you never have applied for a road driver job at any East Texas Terminal where they have road driver domiciled, have you? A. No, sir.

Q. The only place that you have applied was here in San Antonio where you knew they didn't have road drivers domiciled? A. That's correct.

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[57] A. I am 45.

Q. 45, and what is your height? A. 5-11.

Q. How much do you weigh? A. 235.

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[60] Q. I'm not talking about them individually but I mean its clear from your testimony that you have suffered a great many injuries. A. Yes, sir, I have.

Q. A great many accidents. A. Yes.

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[64] Q. That if you transferred, you would have to go down to the bottom of whatever roster you transferred to. If you transferred to Dallas, you would be at the bottom of the road driver's roster? A. That's right.

Q. And then you told us when your deposition was taken that you were not prepared to do that at this time? A. I told you I would think about it.

Q. But you were unwilling to tell us, give us an answer at that point whether you were willing to give up your city seniority and go to the bottom of some roster at a place where the company had— A. I was willing when I made my application in 1970, I was willing to give up my—

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[65] Q. And you don't know whether you could qualify as a road driver according to the company standards and

qualifications You don't know that at this time? A. Well, if you check your records, I took a test. They gave me a road test in 1971 and I passed it. And they gave me a test, a written examination in 1971 and I passed it too.

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[69] MR. WEISS: Your Honor, Mr. Heidelberg is now purporting to adduce testimony from a gentlemen named Gomez who is not a plaintiff and we don's see how his testimony would have any relevance. This is not a class action. And as I understand the situation, Mr. Gomez applied for a road drivers job and never filed any EEOC charge. He didn't choose to be a party plaintiff in this suit. I don't see how his [70] testimony would have any relevance or materiality.

THE COURT: I assume, this being a matter before the court, that Mr. Heidelberg probably has in mind using witness to establish a general practice and to show that this man was similarily treated although he may have no personal complaint. It would merely corroborate the testimony that such a practice exists. For that limited purpose—

MR. HEIDELBERG: For that purpose and also, Your Honor, it has not been established that this is not a class action. The allegation is made in the complaint and there have been no motions filed. The answers of the defendant deny that this is a class action, but of course we maintained that there is class action involved.

THE COURT: Well, are you contending now as far as this trial is concerned that this is a class action?

MR. HEIDELBERG: Yes, Your Honor.

THE COURT: And how many people are you going to try to establish this by?

MR. HEIDELBERG: As outlined in the complaint Your Honor, the class would consist of the Mexican-American and black city drivers who are located in the State of

Texas, covered by the jurisdiction of the Southern Conference Supplemental Agreement.

THE COURT: Well, it hasn't been urged to this court that this is a class action. I'm not sure that it is a [71] proper case for a class action. I have had quite a few of those class actions. I'm not sure that this is the type of thing that would come within a class action. Aside from that.

MR. HEIDELBERG: Aside from that, Your Honor, I think testimony as to the general practice of the company especially in this situation—

THE COURT: All right, I'm going to allow you for that limited purpose. But by what authority do you bring this suit for a class? Have you been employed by everyone of the people in this conference to bring this suit for them?

MR. HEIDELBERG: No, Your Honor, but I don't think that the law requires that.

THE COURT: Well, what about these people who have filed these other suits? Are you representing them also. You have got other people in Leeway and Yellow and they are in the same class with these people, aren't they?

MR. HEIDELBERG: No, Your Honor. They are not employed by the same defendant.

THE COURT: In other words, you are saying that your class refers only to this one defendant?

MR. HEIDELBERG: Yes, sir.

THE COURT: All right, I will leave that open.

MR. WEISS: I would like just to make one further observation with reference to the class. It seems to me that he alleged that it should be a class action. All of the [72] defendants denied that it should. I think it was incumbent upon him prior to the trial to have filed a motion to establish that it was a class action.

THE COURT: I agree. But just for this one witness, unless it gets to [sic] far out of hand, Mr. Weiss—he is also offering this witness for the limited purpose of showing the general company practice which would coincide and corroborate the testimony of the parties in the case. I am certainly going to allow it for that purpose and I will keep the question of the class open.

Trinidad Gomez

called as a witness by the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. HEIDELBERG:

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Q. And who are you currently employed by? A. ETMF Freight System.

Q. How long have you been employed by East Texas Motor Freight? A. Twenty years.

[73] Q. And could you tell us where you were initially employed? A. At the ETMF Terminal on Avenue B.

Q. Is that here in San Antonio, Texas? A. Yes, sir, here in San Antonio.

Q. And what positions have you held other than city driver if you have held any other positions? A. No, just the city driver.

Q. What is your seniority there with the company? A. March 5, 1952.

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Q. (By Mr. Heidelberg:) Mr. Gomez, I want to show you what has been marked as plaintiff's Exhibit 8 and ask you whether or not you can identify this particular document? A. Yes, that's my application for a drivers job with ETMF.

Q. When do you recall filing that application? A. It was back in September 1970.

Q. Would you explain to the court the reason for your [74] filing this application? A. I wanted to better myself a little bit. I wanted to get a job on the road, get paid more money.

Q. Have you heard anything from the company with reference to this application? A. No, sir.

Q. Could you tell the court the different type of equipment you have driven during the course of your employment at East Texas Motor Freight? A. Well, I drive just about—I drive all of the equipment that East Texas has. Tractors, trailers, city tractor-trailer, road tractor-trailer, bob-tail, forklift, just about all equipment East Texas has.

Q. Mr. Gomez, you have been employed there since 1952. During that period of time, do you know of any Mexican-American road drivers who have come into the San Antonio Terminal for East Texas Motor Freight? A. No, sir.

Q. During that period of time do you know of any black or negro [sic] road drivers who have come into the San Antonio Terminal for East Texas Motor Freight? A. Not to my knowledge.

Q. What is your national origin, Mr. Gomez? A. Mexican-American.

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[75] CROSS EXAMINATION

BY MR. WEISS:

Q. Mr. Gomez, in this application for a drivers job that you signed on September 1, 1970, you stated this: I fully realize that if I am accepted as a road or line driver I will lose my city seniority on the date of my employment which was 5 March 1952. Were you willing to do that at that time? A. Yes, sir.

Q. Willing to give up 18 years of seniority? A. Yes, sir.

Q. You were willing to do it? Did you realize that if you did that and got a road drivers job in some place where the company has road drivers like Dallas that you would be at the bottom of the road driver's roster? A. Yes, sir.

Q. And that by virture of being at the bottom of the roster, your chance for steady work might be very remote. You realized that? A. Yes, sir.

Q. And you might not get much work at all, you realized that? A. Yes, sir.

[76] Q. Or you might not get any work, you realized that, with no seniority? A. Yes, sir.

Q. And at the time you filed this application, you seriously wanted to do that? A. Yes, sir.

Q. How long have you lived in San Antonio? A. All of my life except for the time I spent in the service.

Q. Do you have a home? A. Yes, sir.

Q. Do you have a family? A. Yes, sir.

Q. How many children? A. I have two step-sons and a son.

Q. You were willing to pull up stakes and move to some far distant place where the company might have road drivers, is that your testimony? A. Yes, sir.

Mr. Weiss: That's all.

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[79] Q. (By Mr. Heidelberg:) Did you understand my last question, Mr. Salinas? A. Yes, whether I heard any members or knew of any members who had asked our local for road driver positions.

Q. Yes. A. Yes, sir, I have.

Q. Could you tell the court the different circumstances and times surrounding those particular requests? A. Well, back in the early 60's when a member would ask, he would be told that there were two seperate contracts, that there were no transfers. Then in the late 60's, middle 60's we were told that we could transfer but we would have to lose our seniority.

Q. Do you recall in the early 60's who with the union told you that? A. Well, Mr. Ray Shafer told us that on at least three occasions that I know of.

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[83] Cross Examination

By The Court:

Q. Let me ask you this: In the course of any of these conversations with the employees and the employers at Roadway, that is, the people in charge, the employees, your co-workers or within the union itself, was any of this motivated by prejudice against you or any of the other men or employees because of their race, because they were Mexican-Americans or black? A. I believe that, yes, sir.

Q. You believe that. But now what facts can you give me to substantiate this? A. The fact that our local never was able to acquire any road driving jobs for any of us Mexican-Americans or blacks who asked for it.

Q. Well, of course now in this particular situation I don't believe there are any line drivers domiciled or residents of San Antonio that work for East Texas Motor Freight, are there? A. No, sir, but——

The Court: What about Roadway? Does Roadway have line drivers living here? A. No, sir, in Dallas. But we are prepared to make that move.

Q. Give up your seniority and make the move to Dallas. All of you are prepared to do that that made application. Now, [84] are there any others besides blacks or Mexican-Americans that are also asking for transfer? A. No, not that I know of. Not at this moment.

Q. You don't know of any Anglos that live here locally or others? A. No, I don't.

Q. That have made such an application. Only the blacks and the Mexican-Americans according to you have made such an application to transfer and they have been, according to you, systematically denied. A. Yes, sir.

Q. No, no one has ever told you, either the union or any of the employers that you have mentioned, East Texas Motor Freight, Roadway or any of them have ever told you that this was because of your race or someone elses race, have they? A. They haven't told me that, no, sir.

Q. It is just the fact that these applications were made and not granted that makes you feel like you are being discriminated against because of your race? The fact of the statistics? A. Yes.

Q. By the numbers in other words? A. Yes, sir, by the numbers.

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Sadrach G. Perez

called as a witness by the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. HEIDELBERG:

Q. Would you state your name for the record? A. Sadrach G. Perez.

Q. What is your address, Mr. Perez? A. 7906 Niagara.

Q. Who are you presently employed by? A. The Mexican-American Unity Counsel.

Q. And prior to that, who were you employed by? A. East Texas Motor Freight.

Q. What was the initial date of your employment with East Texas Motor Freight? A. November 16, 1959.

Q. How long were you employed by East Texas Motor Freight? A. About 13 years as far as I can remember.

Q. What occasioned your leaving East Texas Motor Freight? A. What?

Q. Why did you leave your employment with East Texas Motor Freight? A. I was terminated.

Q. Do you remember the date that you were terminated? A. May 18, 1971.

[87] Q. What type of work did you do while you were employed by East Texas Motor Freight? A. I was a city pickup and delivery driver, performing all of the dock duties and freight handling, driving bob-tails, tractor-trailers, road tractors, city tractors, forklifts and things like that.

Q. What do you mean by "Dock"? A. Dock work.

Q. Would you explain to the court the circumstances surrounding your discharge from East Texas Motor Freight? A. I was given, I believe it was, five or six letters saying that my production, or rather my job was unsatisfactory. This all happened after I filed charges with the Equal Employment Opportunity Commission, after I had submitted an application that I was seeking a road drivers job.

Q. When did you submit this application? A. The application I submitted, the date was August 20th or 21st, 1970.

Q. Did the company ever take any action with respect to your application for a road driver job? A. Other than firing me, no.

Q. What reasons did the company give you for discharging you? A. The letters that they used in my discharge, some said the fact that I did a certain amount of work and I took • • •

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[91] by the company, I had nothing prepared. I wanted to answer and Brother Shafer who was there with me advised me not to answer.

Q. Did your national origin come up at any time during the grievance hearing? A. I don't remember if it did. I don't think so.

Q. Did the fact that you had filed charges with the Equal Employment Opportunity Commission come up during the grievance hearings? A. I don't remember. I don't believe so though.

Q. Mr. Perez, basically tell the court why you filed your charges with the Equal Employment Opportunity Commission and why did you file this particular lawsuit? A. I have always wanted to be a line driver with that company. And it was my understanding due to no accidents on my good driving record and my work performance which I thought was very, very good, the company disagreed at the end, but I was performing my duties and I believe that I qualified to be a road driver. And I wanted a job on the road. It paid better. I believe I could better myself, and I kept asking for a road job, and always I was turned down in different ways. I was discouraged by being told that I didn't really want to move out of town and things like this. But I just—I wanted to drive on the road and I do up to this date.

Q. Why did you want to drive on the road? [92] A. Well, first of all I enjoy driving trucks. I would like to better myself. As far as the pay is concerned, it is higher. And I believe I am qualified to be a road driver.

Q. Did you ever make any attempts to find out from the local union as to whether or not you could become a road driver for East Texas Motor Freight? A. Yes.

Q. Would you explain to us what those events were? A. There were several times when I discussed it with the President of the Local Union who is Ray Shafer. And since I didn't remember the exact dates or the exact instances of what really was said one way or another, I didn't mention other than three that I was sure that I could remember. One time, it was in 1966, I discussed it with Mr. Ray Shafer. And he told me that I could not transfer because I was bound by a city contract. I could not transfer into the road contract. It was another contract.

And then pretty close to the time when I go fired, around, I believe it was April 1970 that I asked at an Executive Board Meeting and at a regular membership meeting. That's the three times that I can remember.

Q. Did you bring this fact to the Southern Conference of Teamsters attention? A. I did not know which way to

go or who to make my intentions known. So what I did, I wrote a letter to Mr. Frank [93] Fitzsimmons. At that time he was the Acting President for the international union.

MR. HEIDELBERG: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. (By Mr. Heidelberg:) Mr. Perez, let me show you what has been marked as Plaintiffs Exhibit Number 9 and ask you whether or not that's the letter that you are testifying about? A. Yes, it is.

MR. HEIDELBERG: Your Honor, I think the letter will speak for itself.

Q. (By Mr. Heidelberg:) Did you receive a response from Mr. Fitzsimmons concerning this particular letter? A. Yes, sir, about a week-and-a-half later.

MR. HEIDELBERG: I'm sorry, Your Honor, may I approach the witness again?

THE COURT: Yes, you may.

Q. (By Mr. Heidelberg:) Let me show you what has been marked as Plaintiffs Exhibit Number 10 and ask you whether or not this is the letter you received in response to your letter to Mr. Fitzsimmons? A. Yes, it is.

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CROSS EXAMINATION

BY MR. PENSHORN

[131] Q. You had just been discharged by East Texas and had just lost your grievance before the grievance committee. Did you seriously think at that time that you could get a road job with East Texas after having just been fired by them? A. I had been fired due to the fact that Mr. Shafer and you, sir, did no represent me over there in Dallas.

Q. I understand. But my question is did you think that you could get a road drivers job after the company had fired you? A. I thought that I was going to get back on

the company because I was unjustly fired and I was going to see what I could do to get back to East Texas, which is what I eventually did.

Q. Was there anything else said about road driver jobs on that occasion that you can recall? A. No. We discussed other jobs, about organizing some place in Corpus Christi. And Mr. Shafer offered me a position over there and said he would pay my utilities and my rent, and that was it. No other moneys.

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[132] Q. Was that all that you said? A. As far as I can remember, yes.

Q. And you have told us all that he said? A. I think that it was, yes.

Q. All right. Now then, on the third occasion, what did you say about a road job when you told us you mentioned it [133] at a general membership meeting? A. I believe it was the membership meeting right after the executive board meeting, of which I was an officer. And I sat right next to Mr. Shafer. When the question came up, I believe it was Modesto Herrera from the meeting room floor, inquiring about a VCS Merger and consequently road jobs by the two companies merging, I turned around to him and I said "Yes, Ray, this is what I was asking you about." And when he answered he answered me and the general membership saying very briefly that he would look into the matter. That's as closely as I can remember.

Q. Did he say anything else? A. He might have said something else, but I don't remember.

Q. Did you say anything else on that occasion? A. No. I spoke very little myself.

Q. Now, those are the only three times, are they now, that you have spoken to Union Representative Shafer about road jobs, is that right? A. That I have spoken about it, yes. Myself.

Q. All right. Now, on no occasion, Mr. Perez, did you ever complain to Mr. Shafer that East Texas Motor Freight was

discriminating against Mexican-American and Negroes, did you, sir? A. Not in those words, no, sir.

Q. All right. Now, one of your complaints is the [134] contracts in this case, are they not? A. Yes.

Q. All right. I'd like to ask you to turn to your deposition before you, page 95. Did you find it, sir? Now, look at line 15, please, and follow what I read.

"Q. There have been meetings called for the purpose of finding out what the employees of East Texas and other freight lines to be affected by the contract want, is that right?"

Your answer was "Yes."

Right, sir? A. Right.

"Q. All right. Now, have you attended some of those meetings?

"A. Yes.

"Q. All right. Now, at any of those meetings, Mr. Perez, have you personally ever requested that a demand be submitted for a single contract for road and city drivers working for East Texas Motor Freight?"

And wasn't your answer, "Not in those terms, [sic] No." A. Yes.

Q. "Q. And in what terms have you spoken about it?

"A. Requesting about the road, the pay, the advancement and things of that nature.

"Q. You have never made a request that one contract [135] be negotiated for all road and city drivers of East Texas, is that right?

"A. Right.

"Q. Have you ever heard any other employees of East Texas request such a contract?

"A. No."

Is that what you testified to, sir? A. "Have you ever heard any of the other employees of East Texas at any of those meetings make such a request."

Q. And your answer? A. "No."

Q. No. Okay. Mr. Perez, when East Texas Motor Freight bought Valley Copper State System, the two seniority lists or the city drivers working for the two companies under the jurisdiction of 657 were merged, dovetailed, were they not, sir? A. Yes.

Q. And did you not complain bitterly about that merger at that time? A. I don't know if I complained bitterly. I complained about it because it knocked me down about 14 slots.

Q. But in this suit you are seeking a statewide merger of all road and city seniority lists, aren't you? A. Road and city lists, yes.

MR. PENSHORN: That's all the questions I have.

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[141]

Ed A. Asbury

called as a witness by the defendant, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. WEISS:

Q. Will you state your name for the record, please. A. Ed A. Asbury.

Q. Where do you live, Mr. Asbury? A. 6034 Winding Ridge, San Antonio.

Q. What is your business or occupation? A. I'm Terminal Manager for East Texas Motor Freight in San Antonio.

Q. How long have you been Terminal Manager of East Texas in San Antonio? A. Two years this past month.

Q. What did you do prior to coming to San Antonio as Terminal Manager? A. I was superintendent of terminals for East Texas [142] Motor Freight.

Q. Stationed where? A. In Dallas, Texas.

Q. In Dallas. How long were you superintendent of terminals? A. Ten years.

Q. You have been with East Texas since when? A. 1961.

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[156] CROSS EXAMINATION

BY MR. HEIDELBERG:

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[167] Q. Let me ask you this, Mr. Asbury: If an employee came to your office, a city driver now, and wanted to make an application to get on the road, how would he go about doing that according to your own belief? A. He would probably go to the Terminal Manager and make that request.

Q. In other words, he could file a written application with the Terminal Manager and that would be forwarded to Dallas to the Corporate Headquarters, is that correct? [168] A. I think it would be.

Q. And that would be the standard procedure that would be followed by you, is that correct? A. This is the way that I would handle it.

Q. I spent several hours going through a lot of files in Dallas when I was up there. And it appeared to me that there was just about everything pertaining to employees in those Personnel Folders. Based upon that, is it your practice to send to Dallas just about everything that is in an individual's Personnel Folder here in San Antonio? A. Yes, sir.

Q. In other words, if a person applied for a transfer to a road job, you would immediately forward that to Dallas, would you not? A. I would have.

Q. Did you ever have an occasion to discuss the no-transfer policy with Mr. Shafer who is the President of Local 657? A. I don't recall ever having discussed it with him.

Q. You have been employed by ETMF. I believe you testified that you, as the Director of Terminals, went throughout the entire system, at least in the Southern Conference, is that correct? A. Yes, sir.

Q. And also on the deposition I believe you testified [169] that you served as Replacement Terminal Manager for vacationing Terminal Managers at various times, is that correct? A. Yes, that's correct.

Q. This would include experiences from 1960 on until the time you became Terminal Manager. A. 1961.

Q. During that period of time have you ever known of a Negro or a black line driver being employed by East Texas Motor Freight? A. I didn't see one.

Q. Have you ever seen a Mexican-American employed as a line driver with East Texas Motor Freight? A. No, sir.

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[178] MR. BAAB: Yes, that's correct. Now, it is my understanding, and Mr. Heidelberg can correct me if I'm wrong, he has agreed to enter into the following stipulation concerning Mr. Smith's testimony in the Yellow Freight case which has now been transcribed. That it, that were Mr. Smith called to testify here and asked the same questions, he would give the same answers as those reflected in the transcription, that is, [179] both the questions and answers reflected in the transcription of his testimony in the Yellow Freight case.

With that stipulation, we don't intend to duplicate.

THE COURT: Any testimony may be considered by this court where applicable here and relevant to the facts in this case.

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[180] DIRECT EXAMINATION

BY MR. BAAB:

Q. State your full name, please. A. My name is W. C. Smith.

Q. You are the same W. C. Smith who testified under oath [181] in the case tried before this court last week, Herrera, et al vs Yellow Freight System, et al? A. Yes.

Q. Mr. Smith, you have been present and have heard the

stipulation entered into the record concerning your testimony in that case. There you testified that you first became familiar and began to participate in negotiations in the trucking industry sometime in the late 40s, is that correct? A. Yes, sir.

Q. All right, sir. I want you to tell the court what the status of collective bargaining agreements covering the freight industry was at that time in terms of breadth. And by that, I mean first of all did there exist at that time area-wide agreements covering segments of the freight industry? A. In answer to the question was there area-wide agreements, the answer is no. The agreements were negotiated by the local union with each individual employer.

Q. All right. And were the majority of those agreements covering both city and road drivers at that time? A. No. They were singular contracts covering singular units.

Q. All right. Well, is your testimony then that the contracts at that time for city and road were in general, separate. A. They were separate.

[182] Q. Were there some exceptions? A. Very few exceptions.

Q. Can you state one such exception? A. One would be the E.T. and W&C in Northeast Tennessee.

Q. In that case, that company had a single collective bargaining agreement covering both city and road drivers? A. Yes, sir.

Q. All right, sir. Are you familiar with that company's present operation? A. Yes, sir.

Q. And is there now a single agreement covering both city and road drivers? A. No.

Q. Are there separate agreements covering both city and road drivers? A. Yes.

Q. All right, sir. Now, are you aware whether subsequent to the time we have been speaking of came to exist, area-wide agreements in the freight industry? A. Yes, sir.

Q. What was the approximate date in which these agreements first came into existence, if you know? A. The first

area-wide agreement in the Southern Conference was in 1951, which became known as the Southeast Area contract and also an additional Southwest Area contract.

[183] Q. State very briefly what the Southeast and Southwest Areas were. A. Basically, the Mississippi River was the dividing line between the two areas.

Q. Now, did you have some hand in the negotiations for the contracts in these areas? A. In 1951?

Q. Yes. A. As a member only.

Q. All right, sir. Now, was there negotiated at that time a common contract covering both city and road drivers in the Southeast area? A. No.

Q. Were there separate contracts? A. Yes, sir.

Q. And would the same be true for the Southwest Area? A. Yes, sir.

Q. Up to this time have there in your experience continued to be separate collective bargaining agreements covering city and road employees in the Southern Conference Area? A. Yes, sir.

Q. Now, did there sometime subsequent to 1951 then come into existence area agreements that extended beyond Southeast and Southwest? A. The National Master Contract became effective in [184] 1964.

Q. All right, sir. That was the first time there was negotiated a national master agreement, is that correct? A. Yes.

Q. All right. And would it be correct to say that the National Master Agreement was accompanied by area supplements supplemental agreements? A. Yes, sir.

Q. And the same is true today, although the areas have changed somewhat, is that correct? A. Yes, sir. There no longer exists a Southeast and Southwest. That was merged in the years 69-70.

Q. So, the contract we are talking about now, the contract covering 1970 to 73, that is the first time there was a National Master Freight Agreement and a Southern Conference Area supplement covering road drivers and then a

separate Southern Conference Area supplement covering city drivers, is that correct? A. Well, it is the first time that it became a common one-contract area, Southern Conference. Prior to then, it had been Southeast, Southwest.

Q. All right, sir. Now, Mr. Smith, what was your job capacity in the year 1969, if you recall? A. In 1969 I acted in a dual capacity. I went to work for the International Unions. And I also had a local union, [185] local 891, Jackson, Mississippi.

Q. All right, sir. You previously have been President of that local union is your testimony I believe? A. Yes.

Q. Are you familiar with what the racial make-up of your local union was in proximate percentages in the years 1969-70. A. Approximately 60 percent white and 40 percent black. That is the approximate figure.

Q. All right, sir. Now, state whether or not you held a meeting of the members of your local union employed in freight industry to discuss proposals to be made for negotiations for the 1970 National Master Agreement and area supplement. A. Yes.

Q. Approximately when was that meeting held and where, if you recall? A. In the latter part of 1969. It would have been in November or December. It was held at the local Union Hall, Jackson, Mississippi.

Q. And was that meeting attended by both city employees and road employees to be covered by the freight agreements? A. Yes, sir.

Q. Now, what was the approximate racial make-up of the employees attending that meeting, if you recall? A. Approximately 50-50.

[186] Q. All right. Fifty percent black and fifty percent white? A. Yes, sir.

Q. And what was the approximate percentage, would you say, of city employees versus road employees attending the meeting? A. There would have been more city employees than road because that was the make-up of that particular local union.

Q. All right, sir. State whether or not there was discussed at the meeting the possibility of merging seniority lists for the city and road employees.

MR. HEIDELBERG: Your Honor, I object to that. Whatever happened in Mississippi I feel is irrelevant to the present case. This particular union is not involved in this litigation.

THE COURT: How is that pertinent to this case?

MR. BAAB: Well, Your Honor, one of r defenses here—it has been somewhat developed in the testimony before. The reason there are separate contracts between city and road employees is because that's what the employees want. It is negotiated on an area-wide basis. The facts already show there are no road employees in this jurisdiction.

THE COURT: Well, I think you have extended it. Go ahead You may inquire.

Q. (By Mr. Baab): Going back to the question, was there [187] discussed the possibility of merging the city and road seniority lists for freight employees in your local union? A. Yes.

Q. And what was the outcome of that discussion? A. A proposal was made by an individual member who was a city employee of ABF Truck Lines requesting that the city-road be merged and there become a common seniority list with all seniority dove-tailed. Once that proposal was made, a general discussion was held on the floor as to the advantages and disadvantages of a merged seniority roster. The man who made the proposal got up and withdrew that request for it to be submitted as a proposal.

Q. All right, sir. Just so that the record may show, was there any physical force exerted on him? A. Oh, no. The individual's name I remember real well was J. B. Herrington.

Q. He withdrew it of his own free will following the discussion? A. Yes, on the basis of what would be the advantages and disadvantages both to city and road.

Q. To your knowledge, was there anybody else present at the meeting who was in favor of merging the seniority lists at the close of the discussion? A. None.

Q. Now, Mr. Smith, have you in your experience as a [188] negotiator in the freight industry come to have the experience of talking with employees concerning the advantages and disadvantages that they feel are inherent in separate seniority systems for city and road? A. Yes.

Q. What are the advantages and disadvantages as you have come to know them that the employees feel? A. One is in regard to physical requirements in the differentiation between the requirements established by law for road driver and city driver or city employee? [sic]

Q. How is that an advantage or disadvantage? A. A road driver is restricted by the Department of Transportation in areas of physical abilities such as eye-sight, a previous heart condition, previous blood pressure, the existence of previous blood pressure. Those same restrictions may not necessarily apply to the city employee.

Q. What is the advantage or disadvantage, and who feels it? A. In this particular case, the majority of the city people feel that it is an advantage to them not to merge with the road drivers because if they became disabled or disqualified they could bring back into the city seniority that they never enjoyed in the city before.

Q. By "they" you mean road drivers? A. Yes.

[189] Q. Are there other advantages or disadvantages that the employees feel in your experience? A. A great many of the employers in the Southern Conference——

Q. Well, I'm talking about the employees at this point. A. Yes, sir. A great many of the employers road drivers are covered by what is known as the Modified System Seniority. This would mean that if a driver is laid off in one local, and we will use East Texas as an example, if he was laid off for lack of work in Memphis, Tennessee, he could take his seniority and move to Dallas, Texas and dove-tail into the board. [sic] If he had a combined seniority roster, city-

there is a trucking company in Memphis, Tennessee named Mid-South, or Southern Forwarding, I'm giving you the wrong name. Southern Forwarding Trucking Company that is approximately 50-50, [191] 50 black and 50 white.

Q. What about Roadway Express? A. Roadway Express today has some minority people. I do not know the exact nature. Meridan, Mississippi has eight or nine out of approximately 100 drivers, but I do not know their overall system balance.

Q. Do you know what the balance is in the Southern Conference? A. No, I do not.

Q. How about Yellow Freight? A. No, I do not know the number.

Q. You would testify to the fact that a great majority of the individuals that drive as line drivers are Anglo or white, would you not? A. I would say that the majority are Anglo.

Q. Would you also agree with me that most of your so-called minority employees have been hired from the last two or three years? A. I would believe that to be true, yes, sir.

Q. And prior to that time, there were virtually none or no minority employees employed by these freight companies that we have been discussing, is that correct? A. The word "none" I would disagree with. There were very few employees.

Q. And you knew that? [192] A. Did I know it then?

Q. Yes. A. Yes, I knew it then.

Q. You knew it when you participated in the various negotiating sessions that took place in the formulation of the contracts that are presently in existence, the Southern Conference Supplemental Agreement? A. I knew on the basis of an overall picture in the Southern Conference that there was not a large number of minority people employed as road drivers. As far as the individual employer, individual location such as San Antonio or Dallas, my knowledge would not cover that.

Q. Let me ask you this: Did the thought ever cross your own mind that one of the reasons that contributed to the exclusion or the very small number of minorities as road drivers was the fact that you had a separate seniority roster? A. No, the opposite is true. Having been a road driver since 1948 and having participated as a member all these years, I know why there was no or a limited number of minority people in some places.

Q. And what was the reason? A. The primary reason is the people never made application for the job.

Q. That's because they knew they wouldn't be hired, isn't that correct? [193] A. No.

Q. I believe your testimony is that you participated in the last session and also that you participated in the negotiations with reference to the city driver supplemental agreement and also the road driver agreement, is that correct? A. Yes, sir.

Q. Were you familiar at that time that several law suits had been filed against various trucking companies concerning dual lines of seniority? A. At the time of the negotiations in 1969?

Q. Yes. A. No. I did not have knowledge of individual law suits against individual employer units.

Q. You weren't familiar with the fact that there was a law suit pending against East Texas Motor Freight in Memphis, Tennessee? A. No.

Q. Or against Roadway? A. I knew that there was litigation against Roadway and the Teamsters.

Q. That's one case. Are there any other cases that you can remember? A. That is the only case. And the way I had knowledge of that is because there was some discussion during contract negotiations in Washington, D. C. between the parties.

[194] Q. And that law suit was filed by the United States Government, was it not? A. I believe that to be true. I'm not sure.

Q. Let me ask you this: Did the thought ever cross your own mind that one of the reasons that contributed to the exclusion or the very small number of minorities as road drivers was the fact that you had a separate seniority roster? A. No, the opposite is true. Having been a road driver since 1948 and having participated as a member all these years, I know why there was no or a limited number of minority people in some places.

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[194] Q. And that law suit was filed by the United States Government, was it not? A. I believe that to be true. I'm not sure.

Q. There was some consideration then at the international level concerning the dual line seniority or the separate roster? A. In regard to Roadway?

Q. Well, with regard to the company. With regard to the Teamsters contract. A. I would like for you to ask the question again. I do not believe I understand it.

Q. I believe you testified that there was some discussion in Washington, amongst the Teamsters concerning the Roadway case, is that correct? A. Yes, but not in regards to the contract itself. There was some discussion between employees and the International Brotherhood of Teamsters concerning the Roadway case as a law suit.

Q. Was there a consideration at that time that the courts might order a merger of the dual lines of seniority? A. I wouldn't have any knowledge of what the other people thought might or might not happen. We are constantly conscious of that thought today that the courts might someday order that to happen.

Q. Let me ask you this: Did anybody say anything to you concerning the fact that the courts might order a merger of [195] the seniority rosters? A. No, sir.

Q. And you didn't mention it to anybody? A. Not in the vein that you described it.

Q. What vein was it then? A. I would say that there was a discussion between me and the business agents that someday the court may order a total dove-tailing of both city, office, shop and road employees.

Q. As the person having the responsibility for that in the Teamsters Union, have you consistent with that made any proposals for the upcoming negotiations or the upcoming contract to consider the possibility of merging the seniorities? A. In the first place, I do not have the right or the authority to make a proposal. That proposal must come from the membership.

Q. Are you still President of the Local in Jacksonville? A. No, I resigned in 1970 to devote full time to the job I presently have.

Q. Do you feel it incumbent upon yourself based upon the non-discrimination policy of the contract to mention on a personal basis to Mr. Fitzsimmons or any other representative of the Teamsters that single seniority be considered for the next contract? A. If that occasion came about, it would be my recommendation that separate seniority lists be maintained.

[196] Q. You testified, I believe, in the prior cases that separate seniority lines are more efficient, or the converse, that the single seniority roster would be inefficient. To your own knowledge, are there any truck lines or freight lines that operate with the single seniority roster? A. Well, when you say truck lines, truck lines can vary from local cartage to a trans-continental carrier such as Roadway, Consolidated.

Q. Well, any employer that has a contract with the Teamsters that operate a trucking operation, are there any such units that have a single seniority roster for road and city drivers? A. There are some truck lines, and again, you are covering from local cartage to trans-continental carriers. I know of no large common carier, over the road operation, that has singular seniority or common seniority, road seniority.

Q. With reference to those companies that do have a merged seniority, have you had any discussion with any of the employers to determine whether or not their present system is efficient or inefficient? A. I have not.

Q. So, you can't testify then that the merged seniority in those cases has led to an inefficiency in the business, can you? A. You say the ones that do have——

[197] Q. Yes. A. My answer would be no.

Q. I believe you also testified that the Teamsters were responsible for lobbying and for the creation of the passage of Title 7 of the 1964 Civil Rights Act, is that correct? A. Yes, sir.

Q. Are you familiar with that particular act? A. Only on its face. Not as an attorney. Not as an attorney, I'm not familiar with it.

Q. Let me ask you this question: Do you know whether or not an individual's civil rights, and this is a civil rights case, can be deprived by a vote of a certain number of people?

MR. BAAB: I object to the question. It calls for a legal conclusion.

THE COURT: I believe he said he wasn't a lawyer. That would be a legal conclusion. I will sustain the objection.

Q. (By Mr. Heidelberg:) I believe you testified that there is a modified system of seniority for road drivers, is that correct? A. There is more than one type of seniority for road drivers. The modified system is one of them. Yes.

Q. Are you familiar with what type of system East Texas Motor Freight employees? A. East Texas Motor Freight is a modified system.

Q. Which means that a driver from Memphis can come in [198] assume he is laid off in Memphis, and bump a driver with a lesser seniority than a road driver in Dallas, is that correct? A. The instance that you have described, if he was properly laid off in Memphis, he would have a right to exercise his modified system on a younger driver within the system.

Q. So, you do have a system within the Southern Conference with East Texas Motor Freight where you have drivers quite possibly shifting from one domicile to another? A. The answer is yes. And this shift comes quite often due to highway changes, equipment changes, route changes.

Q. Have you ever had any negotiations with the company where the company has brought up the fact that they are displeased with the modified seniority road system and wanted to have it removed from the contract? A. No employer to my knowledge likes the modified system. They would constantly like to have it removed from the contract.

Q. So, it was upon the insistence of the Teamsters that we have the modified road seniority system, is that correct? A. I would say that is true, sir. When you say the Team-

sters, you have reference to the Teamsters membership covered by the contract.

Q. If that's the case, why didn't the teamsters try to do the same thing for the city drivers? A. The city drivers have an entirely different set of [199] circumstances governing whether they work or they do not work. And I'll give you two examples. San Antonio, Texas with the East Texas Motor Freight, what determines how many people work for East Texas in the city is determined by the amount of business that they have in San Antonio, how much freight comes to San Antonio, how much freight leaves San Antonio and how much is broken across the dock, and "broken" is the word meaning unloaded.

A road driver seniority is determined by many other factors than business. For an example, a new road is built between Dallas and Jackson, Mississippi. It now permits road drivers to run from Dallas to Jackson without stopping or breaking. In the past, road drivers would run part of the way from Dallas to Jackson such as Shreveport, go to bed and another driver would go from Shreveport to Jackson.

As the interstates improved, as the highway system improves, it made it necessary for road drivers to be redomiciled. If they were covered by terminal seniority, that man who had previously been employed in Shreveport, Louisiana could have been laid off under the language of the contract and the Dallas driver run over, ahead or by him from Dallas to Jackson, Mississippi. With the modified system, this gives him protection outside of the 25-mile area or 50-mile area as is described in the contract.

Q. And the city drivers of course are not afforded the same protection because if they are laid off in San Antonio, [200] they can't go to Dallas or anywhere else. A. Well, again, the theory here is that the man in Shreveport, Louisiana, his work has been taken away from him by no circumstances which he has control of. New equipment, new authority, new highway.

Q. Well, isn't that true also of the city driver when there is not enough freight for him to handle and he is laid off? A. You give two different descriptions. The description I gave was that the business that the man in Shereveport formerly performed is now still being performed by a man out of Dallas running from Dallas to Jackson direct. If, in case of the San Antonio man, if he is laid off for lack of work, no one would be performing the work that he formerly performed in San Antonio. The business would no longer be here. The business condition controls whether he works or does not work under terminal seniority.

Q. Under the modified plan, the road driver if he was laid off, didn't have work, he could transfer someplace else, could he not, regardless of whether his work was replaced as you said, by a driver from Dallas? A. Under the question that you posed, if a road driver is properly laid off, he can go and bump a junior man. A proper lay-off means this, that there is no work there for him available. If there is work there, he cannot go to another [201] town and bump another man.

Q. Let me ask you this: I believe you testified in response to a question by counsel that the proper line of seniority provides for mutual protection of both city and road driver, is that correct? A. In my opinion, yes.

Q. Let me ask you this: Doesn't the fact that you have separate lines of seniority also provide for mutual exclusion of city drivers and road drivers? A. Seclusion?

Q. Exclusion. A. Exclusion?

Q. Yes. A. You mean from moving freely from one unit to another?

Q. Yes. A. The answer is yes.

MR. HEIDELBERG: Thank you.

REDIRECT EXAMINATION

BY MR. BAAB:

Q. Mr. Smith, have the city employees covered in the Southern Conference area by the National Master Freight

Agreement and applicable supplements ever to your knowledge proposed that they have a modified seniority rather than terminal seniority? [202] A. To my knowledge, there has been no proposal for an overall general request for a merger under the modified system of the city people's seniority. There are a few very small instances where you will have two terminals with common rosters. That's where they are located say 35 miles apart and they operate under a common roster.

Q. That's provided for under the contract, is that right? A. Yes, sir.

Q. Now, counsel on cross asked you why—he was asking you about the fact that according to your testimony few minority group people had applied for road driving jobs in the past. Why is that, in your opinion? A. Well, we are going back now to the 50s, and I'm going to give you my personal knowledge of where I worked and the conditions I worked under.

Q. All right. A. In Jackson, Mississippi if a black man applied for a road drivers job in 1950, 55, 57, he would experience extreme difficulty in even finding a place to eat, a place to sleep away from home. Therefore, black people did not ask for the jobs in 1948 and 1950 and 1955 because it was an insult to their dignity to be dispatched from say Jackson, Mississippi to St. Louis, Missouri and be denied a place to eat or sleep enroute. And in my opinion, they preferred the city jobs and they requested the city jobs and they predominantly made a demand for the city [203] jobs. The public accommodations act was not available for them in those years.

MR. BAAB: Thank you.

THE COURT: May this witness be excused, [sic] Gentlemen?

MR. HEIDELBERG: Your Honor, I have just one more question.

RECROSS EXAMINATION

BY MR. HEIDELBERG:

Q. Mr. Smith, when you participated on the negotiating committees, you were a delegate for the Southern Conference of Teamsters, and that is reflected in the contract, is it not? A. No. I am an employee of the International Union and I am assigned to the Southern Conference. And when I participated in the contract negotiations, and I assume you are talking about 1970-1973?

Q. Yes, I am. A. I participated on the basis that I was assigned that job by the International Union of the Southern Conference.

Q. I probably misled you, but at the rear end of that contract there is a line that says Southern Conference of Teamsters, and your name appears on that list, does it not? A. Yes, I am a member within the Southern Conference of Teamsters, and I was assigned to that particular contract.

Q. So, you were representing or working as an agent for [204] the Southern Conference of Teamsters? A. No.

MR. HEIDELBERG: I pass the witness.

MR. BAAB: That's all the questions I have.

THE COURT: May Mr. Smith be excused? I believe that this will conclude his testimony, gentlemen?

MR. BAAB: Yes.

THE COURT: Mr. Smith, thank you very much. You are excused. Mr. Weiss, I presume you wish to resume the presenting of your testimony. You may proceed.

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Testimony of Ezra Bierle

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DIRECT EXAMINATION

BY MR. WEISS

[216] Q. During the period from 1970 through the time that Mr. Perez was discharged, was he or was he not a sat-

isfactory employee? A. Mr. Perez had the ability of being a good employee when he wanted to be. He could do the job if he wanted to.

MR. HEIDELBERG: Your Honor, I move that answer be stricken as not being responsive to the question.

THE COURT: I will overrule the objection.

Q. (By Mr. Weiss:) Did he do a satisfactory job from 1970 to the time he was fired in 1971? A. No, sir.

Q. Did Mr. Jesse Rodriguez do a satisfactory job during that, we will say from 1970 down to the present time? A. No, sir.

Q. Did the Scobey people indicate to you or Mr. Asbury that they thought Mr. Perez was intentionally mixing up these boxes? A. Yes, they did.

Q. Did you receive calls from customers asking that you not send Mr. Perez to pickup or deliver anything from them? A. Yes, sir, we did.

Q. About how many customers during the period from 1970 through the time he was fired? [217] A. I don't know the exact number, but there were numerous ones.

Q. Those that called you, what sort of complaints did they make? A. That he was being very discourteous to them.

Q. Do these city drivers have any function as salesmen? A. Oh, definitely. Your city driver is considered a salesman as well as a driver.

Q. Explain that to the court. A. If you have a driver who can meet the public very diplomatically and be liked by his customers, he will get more business for us. But if a driver is discourteous to the customers, he doesn't treat them right, he can run off more business than a half dozen salesmen can get back.

Q. Was Mr. Perez that type of driver? A. Yes, sir.

Q. The latter type? A. Yes, sir.

Q. Did you have trouble with Mr. Modesto Herrera of the same kind? A. Yes, we did.

Q. Did any customers call in and say not to send him back? A. Yes, sir, they did.

Q. The same sort of complaint as Mr. Perez? [218] A. Yes, sir.

Q. About how many runs to Lackland do you have a week? A. Approximately three.

Q. And to Randolph, how often do you have to make a run out there? A. We go out there once or twice a week. These are normally bob-tail runs.

Q. As a supervisor at the San Antonio Terminal or as a supervisor at East Texas Terminal, do you have any norms or rules of thumb as to how much freight a city driver is supposed to handle an hour? A. Yes, sir, we have a production quota which we have to meet, and in order to meet this quota we have to have certain production out of the people that we have.

Q. What are those norms or quotas or whatever you want to call them? A. In order to make our dock production we have to unload and load approximately 5,000 pounds per man hour. Our city pickup and delivery quota now is 1650. And our volumn [sic] production which is shipments over 10,000 pounds, our quote is 5,450.

Q. During the last two or two-and-a-half years, has Mr. Herrera made the proper production? A. No, he has not.

Q. How much has he failed, how far has he fallen short? [219] A. He has fallen about, I would say 25 to 30 percent short.

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CROSS EXAMINATION

BY MR. HEIDELBERG

[220] Q. You testified that two or three city drivers made inquiries of you regarding the obtaining of road drivers jobs. Who were those drivers, if you can remember? A. The only one that I know, that I can recall was Trinidad Gomez, that I can recall off-hand.

Q. I believe you testified that there were two or three. Who were the other ones? A. I think they were Mr. Herrera and Andrew Hernandez.

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Q. Your testimony is that three individuals that you can recall came to you and asked you about road driver jobs. When did each of those individuals come and speak to you about the matter? A. Sir, I don't know the dates.

Q. Well, do you recall the year? Was it in 1971? A. I think it was probably in 1970. I really don't recall.

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[230] MR. SEAY: Call Mr. Johnson.

[231] IN THE UNITED STATES COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS

(Caption Omitted in Printing)

H. L. Johnson

called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. SEAY:

Q. Mr. Johnson, would you state your name to the Court. A. H. L. Johnson.

Q. Where do you live? A. Dallas, Texas.

Q. And by whom are you employed? A. East Texas Motor Freight Lines.

Q. In what capacity, Mr. Johnson? A. I am president of the company.

Q. How long have you been president, sir? A. Going on the third year.

Q. When did you come with the East Texas Motor Freight Company? [232] A. 1953.

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Q. Would you please detail briefly for the Court when you were associated with the trucking business and what that experience was, very briefly. [233] A. I became employed in the motor freight industry on July 11, 1935 at Shreveport, Louisiana with the Southwestern Transportation Company as a dock worker. I worked as a dock worker for

a number of months and became a city driver. Drove in the city. And subsequently I became a road driver, drove on the road for a period of time. Later became a checker on the dock, an OS&D Clerk, did office work, became a supervisor and then became assistant terminal manager prior to World War II.

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[234] Q. I would like for you to please state where they operated at that time. A. Generally speaking when I came with the company until 1965, East Texas operated from the Midwest area, namely the Chicago-St. Louis area, Memphis, Tennessee on the east of Texas and Louisiana, and parts of Arkansas.

Q. All right. Was that also their area in the '40's? Do you remember where their operations extended in the '40's? A. My knowledge of East Texas prior to my association with them was a result of being in direct competition with other employers. They operated primarily as a Texas carrier from the beginning up until sometime in the latter '30's, expanded into Arkansas, into Memphis, Tennessee, St. Louis, Missouri and subsequently into Chicago, Illinois about 1940.

Q. All right. Now then, subsequent to your coming with the company, were they granted additional authority by the ICC, additional operating authority. And if so, please tell the expansion of the company. A. In 1965 we acquired the operating authority from Atlanta, Georgia and Birmingham, Alabama on the one end to [235] Memphis, Tennessee, which was a part of formerly the Hoover Motor Freight Express.

Q. All right. Now, what geographical area did that cover in the east? A. That covered Atlanta, Georgia, specifically, and Birmingham, Alabama specifically.

Q. When was the next authority into another section of the country? A. The next acquisition was made under contract with the Lee-American Freight System, which is a small midwest carrier, headquartered in St. Louis, Mis-

souri, which operated in the States of Illinois, St. Louis, Missouri, down to Memphis, Tennessee, Michigan and parts of Indiana.

Q. Then when was your next expansion? A. The next expansion was Lee-American. East Texas Motor Freight Lines was given temporary authority by the Interstate Commerce Commission for management control on October 10, 1967. Subsequent to that, East Texas Motor Freight Lines made an acquisition of Consolidated Copper State Lines, Inc. of Los Angeles, California, better known by the trade name as Valley Copper States, and gained management control through the temporary authority from the Commission, that's the Interstate Commerce Commission, on October 20, 1969.

Q. And was the ETMF and the Valley Copper State sub- [236] sequently merged into one company? A. They were merged legally and formally in December, 1970, as well as Lee-American was merged legally and formally in September, 1970.

Q. And did that merger accomplish your routes to the West Coast? A. It did.

Q. All right. And how many states do you now operate? A. We operate in 19 states with 52 terminals.

Q. All right. Now, Mr. Johnson, as president of the company, are you cognizant of the importance of safety in the operations of an over-the-road carrier? A. Yes, sir.

Q. What effect does the company's safety record—why is that important? What effect does that have and why is it important? Would you state the reasons? A. To retain your operating authority on the criteria of the Interstate Commerce Commission has two primary requisites, a good safety record for fitness, which they have referred to as fitness; the other is what I would call ability, and that's financial ability, or stability to maintain such operations in the economic structure of the transportation industry.

Q. Now, in the 1950's, the record before the Court, a deposition which has been introduced in evidence by the [237]

Plaintiff as Plaintiff's Exhibit 33 of Mr. Harold P. White——

MR. HEIDELBERG: Your Honor, excuse me. I talked to Mrs. Marley, and there is a confusion on the exhibit numbers. That has been changed to 28. The record will reflect that.

THE COURT: Now, let me be sure that I have my record of the exhibits. It is Exhibit Number 28?

MR. HEIDELBERG: Your Honor, Exhibit Number 28 were the the exhibits that were attached to that particular deposition. And Exhibit Number 33 which was misnomered, misnumbered, was the deposition itself. So for convenience sake, we merged the two into Exhibit number 28.

THE COURT: All of the exhibits and the deposition itself are now known as Exhibit Number 28?

MR. HEIDELBERG: Yes, Your Honor.

Q. (By Mr. Seay:) I was referring to page 14, line 15, and page 15, lines 9 to 14. In that deposition that has been introduced into evidence and as was brought out by Mr. Heidelberg, that in that period of time, around 1953, the company was having some difficulties in maintaining appropriate safety standards with the equipment they had, and also there's a reference to difficulties with the Government contract that ETMF had for carrying explosives. And I want to know if you became aware—were you familiar with those difficulties after you came with the company? [238] A. I was made aware of it. Yes, sir.

Q. All right. Would you state what those difficulties were? A. I was advised by Mr. Marvin Blakney who was vice president of the company at that time, and still an officer of the company, that the safety record of East Texas Motor Freight Lines sometime in the early, early '50's was in a bad condition and that he had been advised by the Interstate Commerce Commission as an officer of the company

that the safety record must be improved. The accident frequency must be reduced. I was also advised by Mr. Blakney that the insurance carrier was carrying East Texas's PI & PD coverage during those years had cancelled the insurance coverage. Subsequently, two of the owners, as told to me by Mr. Blakney, made a tour of the system, talking to the road drivers and other employees, advising them that the safety record had to be improved immediately because the insurance had been cancelled, and they were out seeking insurance companies who would extend such coverage which is required by the Interstate Commerce Commission.

And that also Mr. Blakney advised that during that period, that East Texas Motor Freight Lines had been taken off the approved list, and I do not know the period of time, of the handling of Class A and B explosives.

Q. For the Department of Transportation of the ICC? [239] A. Of the ICC. Yes, sir.

Q. Now, I want to pin down the time. That was prior, some time prior to your coming with the company? A. Yes, sir.

Q. All right. Now, who was the safety director at the time you came with the company, Mr. Johnson? A. A gentleman by the name of A. J. Harriman.

Q. And was he at any time replaced in the '50's? A. Shortly after January 1, 1954, Mr. Harriman was replaced by a gentleman named Mr. Pete Mondics as the director of safety for the company.

Q. And how long did Mr. Mondics stay with the company as director of safety? A. Mr. Mondics was with the company until approximately August 1957.

Q. Who came in then? A. When Mr. R. W. Huffman was employed as director of safety.

Q. Is Mr. Huffman in the court room? A. Yes, sir.

Q. Incidently, you mentioned Mr. Blakney, where is he now? A. Mr. Blakney is senior vice president and administrator for the company, and presently he is ill and not able to be on duty.

[240] Q. In other words, he's been in the hospital and confined to his home? A. Confined to his home due to illness.

Q. All right, thank you. Now, Mr. Johnson, were you familiar with the qualifications for road drivers back there in the '50's at the time that Mondics was—generally familiar with them at the time Mr. Mondics was director of safety? A. Yes, sir.

Q. And after Mr. Huffman came, do you know whether any changes were made? I'm not asking you what changes were made, I'll cover that with Mr. Huffman, I'm just asking you whether any changes were made after Mr. Huffman—— A. Yes. The qualifications were greatly improved after Mr. Huffman came in.

Q. What was the company stressing in the '50's there when Mr. Mondics was there, in view of your adverse history on the safety record. A. The company appointed me general manager on January 1, 1954. And he was instructed along with me as superintendent of terminals which encompassed the field operations that the safety record of the East Texas Motor Freight Lines had to be improved drastically, that the company did not want to find it's certificate in jeopardy again. So this was of primary concern not only as a policy, but as a day-to- [241] day activity. And this caused us to seek out a man who had the qualifications to help improve that safety record. Mr. Mondics' primary responsibility was—of course, he had the over-all responsibility of safety, but his primary was to institute improved safety habits among road drivers in all categories.

Q. During that period of the '50's, were you primarily seeking to improve the quality of the road drivers that you then had employed, or were you in the business of actively seeking and hiring people at that time? A. We were more involved in training and re-training, I should say say, the road drivers that we had to get them to understand the severity of the accident problem and the safety needs, to up-grade them by more training. This included in-cab training plus safety meetings and well-defined safety programs.

Q. Now, did you have a qualification with respect to, at that time, under Mr. Mondics, with respect to previous over-the-road driving experience? A. Yes. Generally speaking, we were looking for new hires with a minimum of two years' experience.

Q. If you went into hiring? A. If we went into hiring. Yes, sir.

Q. And did you have at that time an age qualification? A. Generally we tried to, on the minimum side, keep it [242] to a minimum of 27 years. We preferred a little older type of individual.

Q. All right. Now, at this time——

MR. SEAY: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. (By Mr. Seay:) I hand you what has been marked in the record as Plaintiff's Exhibit 31. Do you recognize that exhibit, Mr. Johnson? A. Yes.

Q. To whom is it addressed? A. It is addressed to all terminal managers.

Q. And who is the signatory there? A. Myself, H. L. Johnson.

Q. I believe you stated you were superintendent of terminals at that time? A. That's correct.

Q. Would you please read that to the Court. A. "For your information and guidance, the following is a new company policy effective at once. No regularly employed city employee will be transferred to a position as road driver for East Texas Motor Freight Lines, Inc. at any terminal. This action is taken in the interest of regular city employees who have already established city seniority. With family responsibilities, the company feels it is in the best interest of the regular city employee to remain on city status rather than [243] give up such seniority to try to make a living for his family on the bottom of the road driver's seniority board. Please handle accordingly."

Q. Now, were you in on the decision to establish the no-transfer rule? A. I was.

Q. And were there any additional reasons at that time? A. Yes.

Q. Would you please state to the Court what those additional reasons were, please sir. A. Other reasons were, the city driver is a very important part of our business. He is a driver-salesman and we need him. And in the building of the East Texas Motor Freight Lines, we need the city driver's ability as a salesman to call on the shipping public to get more business for our company so that we could grow.

Additionally in the interest of safety, the city driver's type of operation is such that he is familiar with city routes, back streets, short routes, how to get to shipper's places, as compared to road drivers who operate under different conditions entirely.

Q. Is the city driver driving ordinarily in daylight hours? A. It is primarily in daylight hours. Yes, sir.

Q. How about the road drivers? [244] A. Road drivers drive all hours, but principally at night, a great majority.

Q. Do they encounter in your system various grades, that is, hills and—— A. Road drivers encounter all types of terrain, whether it be in flat-land country, you have rolling hills, you have blind hills, as compared to mountains, you have mountainous terrain, where you have sea-side terrain. You have weather elements that might not be prevalent when he leaves on his run, but 400 miles away he could run into ice, snow, sleet, and this is a constant thing.

Q. Does he have any direct supervision when he's out there by himself on the road? A. A road driver is the least supervised individual in the motor freight industry.

Q. How about the city driver when he has some problem right here in the area of the city, what can he do? A. The city driver has the ability either through two-way mobile radio communications in our case and most cases, telephones to make constant contact with his terminal, his ter-

minal supervisor for instructions if he runs up against a problem he can't handle.

Q. What are the present qualifications with respect to immediately preceding over-the-road driving experience for the hiring of a new road driver of your company? [245] A. Our present qualifications are three years prior experience. That's one of the prime requisites.

Q. Does that mean immediately preceding? A. Immediately preceding. Yes.

Q. All right. About when was that put in? I know you don't know the date, but about when was that established? A. Approximately the beginning of 1958 or thereabouts.

Q. After Mr. Huffman came with the company? A. After Mr. Huffman.

Q. Do you feel that that is an important qualification to the safety record of the company? A. Most certainly.

Q. Why do you feel that way? A. Because the nature of the city driver's responsibility is one where he has familiar surroundings at all times, and the general, what we call commercial zone area of the city in which he operates. He can operate in many sections, but as a rule, he learns the city and he has familiarity with the streets, traffic conditions, weather conditions, zoning ordinances, shippers' facilities and things of this nature. Contrariwise, the road driver, driving some in day time, some at night, in the fog, icy bridges, he must be able to adjust to all of these conditions at all times.

Q. Now, referring to your exhibit there that you have in your hand, Plaintiff's Exhibit 31, to your knowledge, did [246] national origin have anything to do with the adoption of that rule? A. None whatsoever.

Q. Did a man's race have anything to do with it? A. None whatsoever.

Q. Or his color? A. None whatsoever.

Q. Now, Mr. Johnson, your Valley Copper State, I call it an amalgamation or a merger that took place in December 1970—First, I'm going to ask you if East Texas Motor

Freight prior to the amalgamation, had they had any road drivers in San Antonio, domiciled here? A. No, sir.

Q. Now when the Valley Copper State, when you took them over, did they have any road drivers domiciled in San Antonio? A. I believe I'm correct in saying that Valley Copper State System had one road driver domiciled in San Antonio.

Q. What was done with that one road driver after the amalgamation? A. After that time, it was determined that this road driver was not needed in San Antonio, because San Antonio does not fit the——

Q. Wait a minute. He was not needed. So he was transferred out? [247] A. He was transferred out.

Q. Now, explain to the Court under your contracts with the Teamster's Union, when you want to have a road driver transfered from a city where road drivers are domiciled, what is necessary to do that? A. When you want to physically re-domicile road drivers under the contract we have with the Teamsters Organization, you have to prepare your change of operation, a change of operation in order to justify such a re-domicile.

Q. When you say a change of operation, before whom does that go? A. That goes before a change of operation committee comprised of the union representatives and the employer representatives. And they have to approve this change of operation before it can be put into effect.

Q. Is or is not that conducted on the basis of a hearing where you present testimony? A. Yes, it is.

Q. Do you have anybody on that joint operation committee, your company? A. No. We have no one serving on it.

Q. As I understand it, under your contract with the teamsters, that is a committee of an equal number of representatives of the union and an equal number of employers who make those decisions as to all of these companies on changes [248] of operations under the National Master Freight Agreement, is that correct? A. That's correct.

Q. Was that type of a change processed through the joint committee after the acquisition by ETMF of Valley Copper State? A. Yes.

Q. Now, I want you to give the Court the reasons why in your business judgment ETMF did not want to have road drivers domiciled at San Antonio, at the terminal there? A. San Antonio by its geographical location and by its market area is not conductive in our company to the domicile of road drivers because San Antonio is not considered in our company's jargon a head-haul terminal.

Q. When you say "head-haul"—— A. Yes, head-haul.

Q. Explain what you mean by head-haul. A. Head-haul means where you, what we call, originate a great amount of business that is a requisite for domiciling drivers at that particular place. Nor is San Antonio geographically located in the scheme of our business and our company for a relay-type operation where you have drivers that bring loads in and go to bed, and other drivers take them to another relay point.

Q. That is picking the trailer up, or pick the rig up and [249] go on with it? A. That's correct.

Q. I believe that under these motor carrier safety regulations that the road driver can only operate so many hours at a time, and then he has to have a period of rest, does he not? A. That's correct.

Q. The line drivers that do come into San Antonio, what do they do when they come in here? A. Two things. If they have come from a far distance within the scope of the ten-hour driving allowed by the Commission, they go to bed for rest. They may come in on a dispatch and make a turn through San Antonio back to some other destination.

Q. Is or is not it important to the company to have an operation where you don't have vacant back-hauls, or where you can have a smooth operation across your routes? A. Will you restate that question?

Q. What I'm asking there is, is there always, when a man comes into San Antonio, is there always a back-haul for him? A. Not necessarily.

Q. Now, if a terminal where you have both road drivers and city drivers—incidentally, what terminals do you have those people domiciled at? A. Which group?

[250] Q. Road and city both, where you have them both. In Texas. A. In Texas?

Q. Yes. A. We have road drivers domiciled in Dallas, Texas, Pecos, Texas and Longview, Texas.

Q. Do you also have city drivers there? A. We do not have city drivers in Pecos, Texas. No. We have city drivers in Dallas and Longview. Pecos is considered a relay point, which is a terminied [sic] point to which road drivers operate out of Dallas. And that's as far as they can go safely, and they go to bed and rest, and other drivers take the runs on further west.

Q. All right. And these runs then from the Great Lakes, that come down to these main terminals in Texas where you have your road drivers, and they can go west or east? A. That's correct.

Q. Do you operate south of San Antonio? A. South of San Antonio?

Q. Yes. I mean south or southwest. Do you have any operating authority south of San Antonio? A. No.

Q. In other words, this would be an end-of-the line terminal then? A. Right.

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[258] Q. You testified that the present road driver qualifications were instituted in 1958 by Mr. Huffman. And one of the qualifications was the fact that a person needs to have three years immediate prior road experience to become a road driver, is that correct? A. Approximately in 1958. Yes, sir.

Q. Now, a recent exception has been made to that policy, has it not? A. A recent exception?

Q. Yes. A. Would you qualify what you mean, sir.

Q. Okay. I'm referring specifically to the adoption in January 1972 of the modified no-transfer system. Has an exception been made based upon that policy pertaining to the

three years immediate prior road driving experience? A. I would like to answer the question this way, sir: In the early part of 1972, the no-transfer rule was modified temporarily to accommodate the transfer at terminals where we have domiciled road drivers, to accommodate the transfer of [259] some city drivers to the road who indicated a desire to become road drivers provided they met the qualifications.

Q. Is it not true, Mr. Johnson, that in determining whether or not a person had road-driving experience, that is, experience as a tractor-trailer driver in the city, was to be considered as recognizable, equivalent experience? A. I'm sorry, sir, I don't understand the question specifically.

Q. Those people who transfer from the city to the road obviously have not been driving on the road. Now, is it not true that the company allowed them to use their city tractor-trailer driving experience as equivalent to the three years immediate prior road experience? A. I think that would be the case. Other witnesses are more qualified to that than I am, sir.

Q. And this policy was initiated and applied to individuals who were city drivers domiciled in terminals that domicile both city and road drivers, is that correct? A. Yes, sir.

Q. And that would include Dallas? A. That would include Dallas.

Q. Let me ask you this, Mr. Johnson: The no-transfer policy, in your opinion would it have the effect of maintaining the city drivers in city driving positions? I will repeat the question if it is not clear. [260] A. Well, I need to ask a question if I may, sir. Are you talking about prior to the temporary period we modified to allow entry and then we closed it? Are you talking about——

Q. I'm talking about those terminals like San Antonio that domicile only city drivers. The no-transfer policy has always had the effect of maintaining them in the city, has

it not? A. In San Antonio we have no domiciled road drivers. So it wouldn't affect them, sir.

Q. My question is, Mr. Johnson, a city driver in San Antonio or any other city driver domiciled, under company policy he could not transfer to road positions, is that correct? A. Under the original policy, that's correct.

Q. And do you know of your own personal knowledge that East Texas Motor Freight employs several, perhaps in excess of 100 black and Mexican-American city drivers in the State of Texas? A. I'd say at least that many.

Q. And how many, would you say, blacks and Mexican-Americans were employed on the road? A. I wouldn't attempt to guess. The personnel department would have those figures.

Q. Would it be fair to say then that the black and Mexican-American city drivers who are employed in the State of [261] Texas then are dead-locked into those positions? A. I wouldn't necessarily agree with that. I have already explained that wherever there are line drivers domiciled such as Dallas, we open it up for transfer to city drivers.

Q. Without taking their seniority with them? They have lost their seniority for job bidding and lay-off purposes, have they not? A. Under our policy modification, under the modification of the policy they had to meet those conditions of seniority.

Q. And what was the reason for that? A. The reason for what, sir?

Q. The reason for the loss of the seniority for job bidding and lay-off purposes. Was it because of the contract that exists between the company and the teamsters? A. May I explain this as I understand it, sir?

Q. Go ahead. A. In transferring from the city to the road at the point we have domiciled road drivers, specifically Dallas in this case, since you mentioned Dallas, it was opened up for a period of time for those city drivers who desired to try to qualify as a road driver, to transfer to the road as vacancies existed. And we gave them qualify-

ing tests. If they met those tests, and after a probationary period, they were still meeting those tests, they forfeited their city [262] seniority by failure to return to the city. They maintained it for fringe benefits. But for road seniority, they fit into the road seniority wherever that date put them when they qualified.

Q. My question is, did the collective bargaining agreement have anything at all to do with the fact that these individuals lost their seniority for job bidding and lay-off purposes when they went over into the road-driving categoary? A. Under the terms and conditions of the contract, the company has no right to upset the seniority. The company cannot just deliberately disturb a man's seniority. He has to follow the terms of the contract on seniority.

Q. The contract had great effect upon that decision not to allow them to take their seniority with them? A. Well, since we are obligated to comply with the terms of the contract in that regard, I would have to say yes. We had to be consistent.

Q. Has the company given any consideration to rescinding the modified no-transfer policy? A. No, sir.

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EXAMINATION

BY THE COURT:

Q. Mr. Johnson, when people have transferred from the city to the road, have any Mexican-Americans done this, or any [263] blacks? A. Yes, sir.

Q. And they have had to give up their seniority, is that right? A. Your Honor, if they——

Q. Not your company seniority, but the seniority to bid jobs and that sort of thing, they give that up, don't they, and they have to start at the bottom. Now, do Anglos have to do the same thing? Are they treated just exactly like the Mexican-Americans? A. They are treated all alike, Your Honor.

Q. And you have had people transfer, or have had drivers transfer from the city to the road, Anglos, Blacks and Mexican-Americans, is that right? A. Yes, Your Honor.

Q. And they have all had to give up the same seniority rights to do this? A. Yes, sir.

Q. Is that what you are telling the Court? A. Yes, Your Honor.

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REDIRECT EXAMINATION

BY MR. SEAY

[264] Q. All right. Now, one other question. He asked you about having more accidents in the city than on the road. I will ask you from your experience in the truck line industry what is the danger involved in a road accident with your load and in your city accident? Would you please elaborate on that. Which do you have a chance to have the more serious accident? A. It's on the road. In the city, your frequency generally speaking is great. The severity is not near as great. We have an obligation, both city and road, but on the road the severity can be real great to the traveling public. We have to have safety as the byword every time a man gets behind that wheel. He is hurtling through space if you will, at 60 miles an hour with a rig of a gross vehicle weight of 72,000 and greater depending upon what state. And if [265] he does not have that under control at all times, at the slightest problem, he can be in serious trouble. He can overturn. He can jackknife. He has to try to avoid people coming across highway stripes, center stripes, head-on collisions. It results in tremendous problems. And the worst is injury or death to either party, the employee, the driver or to the adverse vehicle, irregardless of whose fault it is. That's the first thing that has to be considered.

Secondly, then, you have cargo, which is of a tremendous value too. The cargo is not near as important as human life, either injury or death. If I might state so, sir, last Thursday at Portland, Oregon, one of our road drivers with a perfect safety record of many years was leaving on

a run from Portland down to Corning, California. On the freeway, a car forced this driver, cut in front of it, and our driver as a defensive measure took to the rail, split the railing all the way down, overturned and killed our driver instantly. Now, that's good defensive safety driving, even though we lost a life. And that's the main thing that we have to think about.

Our drivers are professional on the road, and we're going to continue to try to keep them professional. The qualifications of our company are severe, and we hope to maintain them so that we can fulfill our obligation to the public.

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[273]

Testimony of R. W. Huffman

DIRECT EXAMINATION

BY MR. SEAY

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Q. And then you came with this company in September 1957? A. Yes, sir.

Q. In what capacity? A. As director of safety.

Q. All right. Now, Mr. Huffman, when you came to East Texas Motor Freight, were you made aware of certain safety problems that had occurred in the past with respect to their safety compliance and their frequency of accidents and their safety reports? A. Yes, sir, I was made aware of it.

Q. Would you please explain to the Court when you became director of safety, if in your employment in that capacity you were given any goals? A. Yes, sir, I was given——

Q. What were they? A. Two primary goals; one was to institute whatever action I deemed necessary to insure maximum compliance with [274] the Federal Motor Carrier Safety Regulations.

And Number two was to reduce the accident frequency of this firm.

Q. All right. Now, after you came with the company, describe briefly what you did the first period of time that you were with the company. Did you make any kind of a survey? A. Well, I made quite an extensive survey of the operation and the records, what had been done and what hadn't been done. And I determined that some additional things must be done.

Q. All right. Now, as a part of your duties as safety director, did you keep track of any safety statistics? A. I did.

Q. Well, what nature? A. Well——

Q. Were they governmental or otherwise? A. That's right. National Safety Council and Governmental Statistics on safety.

Q. Was your company a member of the National Safety Council? A. Yes, sir.

Q. And they do put out certain safety statistics? A. Yes, sir.

Q. All right. Now, did you ascertain that any changes in the qualifications, did you feel that any changes in the [275] qualifications for line drivers should be made? A. Yes, sir, I did.

Q. All right. Did you decide that any changes in the safety program should be made? A. Yes sir.

Q. Would you list the changes that you made after you became safety director. A. They had three driver supervisors that were doing nothing but road patrol work. I assigned them to specific territories and designated them as district safety supervisors. They had no comprehensive in-cab training program whatsoever of in-service drivers. I put these boys in-cab, and gave these men, these drivers instruction in defensive driving and also the overall operation of the vehicles themselves.

Q. Now, you named two. Did you have any more? A. Yes, sir.

Q. List the third one. A. I instituted regular monthly employee meetings in which group instruction was given

on safety. We used every available tool, training tool, films, flipcharts——

Q. Without elaborating on that, I think the Court will want a list of what you did, and I will direct your attention to any one that I want you to elaborate on. Did you have any more? A. Yes, sir. I determined to feed the human ego by [276] a comprehensive safe driver recognition program. I instituted that.

Q. Any more? A. Yes, sir. From statistics that were available to me that I had studied for years, the younger age groups have the highest accident frequency. And as a result, I put in a minimum hiring age limit. Our target goal was 30 to 35 years of age on line drivers.

Q. Well, if you weren't able to get the 30, did you have a lower age there? A. Yes, sir, we did come down to 27 if the man had a long history that indicated his competency as a safe driver.

Q. That's number five. Would you list any more. A. Yes, sir. I determined that we needed to expand the history of line vehicle operations prior to employment by us from two years to three years. I felt that the longer period would give us a better, accurate record of the man's demonstrated history as a safe driver in line-haul operation.

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[280] Q. What ratio has your record been reduced to in respect to the 1970 average of the carriers? A. Well, the average for the other general freight carriers for the year 1970 was 2.8 accidents per million miles; whereas, ours was 1.1 accident per million miles.

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[281] Q. Has the 1971 report come out yet for the government? A. No.

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[282] Q. Would you please read the five sentences there in the first part of that report to the Court. By the way, is that made by Mr. E. K. Willis, Jr., the safety inspector of the ICC? A. Yes, sir.

Q. Please read that to the Court. A. "The last safety survey made prior to the one attached to this report was made April 24, 1952 by E. K. Willis, Jr., Safety Inspector. At the time of the inspection of April 24, 1952, it was found that carriers safety program and compliance was rapidly deteriorating. Nineteen reportable accidents had not been reported as required. Accident violations examined revealed accidents predominantly caused by poor driving, speed, carelessness and so forth on the part of the carrier's employees. An alarming increase of accidents and the severity of these accidents was experienced beginning in the latter month of 1951."

[283] Q. Now, drop down to the last sentence on the last paragraph. Just read that. On that same page. A. "In the period April 1, 1952 to November 15, 1952 the applicant has been involved in lite [sic] accidents which cost the lives of eight people and injuries to twenty-two others."

Q. Now, I'll ask you this question: Did the inspector in connection with that report—Have you seen that report before? A. Yes, sir.

Q. Did he withhold any recommendation with respect to an alternate route or authority, additional authority? A. Yes, sir; he did.

Q. That the company was seeking before the ICC? A. Yes.

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Q. I would like for you to explain to the Court in the same frequency rate as shown on that chart, the graft that has been introduced into evidence as AAAA, what the [284] frequency rate as shown by the number of line accidents reported to the ICC and the number of miles driven was on that date as found by the Government report. A. The accident frequency shown by Mr. Willis is .48 accidents. Back in those days, they related accident frequency to units of 100,000 miles. So to convert this to our present system of using one million miles, we move the decimal point over one plac. So this would thus become 4.8 accidents per million miles of operation.

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Q. Of course, actually in Mr. Willis's report, he shows the number of accidents, he shows 54 accidents in 11,142,531 miles. So on computing that, did you compute the accident frequency rate? A. Yes, sir.

Q. Per million miles? A. Yes, sir.

Q. And you came out with what? A. 4.8 per cent.

Q. Accidents—— A. Accidents per million miles.

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CROSS EXAMINATION

BY MR. HEIDELBERG

[286] Q. (By Mr. Heidelberg:) Let me ask you this, Mr. [287] Huffman: Did you have the responsibility, or do you have the responsibility for making the ultimate determination as to whether or not a person will be employed as a line driver? A. No. The final determination rests with our personnel section after they have checked out his full past employment history, Department of Motor Vehicle Records and etc.

Q. And who would be those individuals? A. Well, Mr. Robert H. Maier, vice president of training personnel.

Q. In addition to Maier, who else would be involved? A. Well, he has under him Jesse Barnes who is the Director of Personnel.

Q. Your testimony is that Mr. Maier is ultimately responsible? A. It is under his supervision. Yes, sir.

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[289] Q. During your responsibilities as safety supervisor, is it correct to state that the terminal manager did have the ultimate authority to hire, to finally hire either city or road drivers? A. The ultimate authority?

Q. Exactly. A. Well, the terminal manager could employ a man on a probationary basis subject to final approval by our personnel section after all of his employment history had been checked out.

Q. And that's true with respect to all city and road drivers employed by East Texas Motor Freight? A. That's correct.

Q. They are all cleared through the Dallas Headquarters? A. That's correct.

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[290] Q. Would you agree with me that you have very tight corporate control when it comes to this matter? A. Yes, sir.

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[291] MR. HEIDELBERG: Yes, Your Honor. I would like the record to reflect that subject to objection or correction [292] by counsel, that upon the examination of 52 road drivers who have either been employed as new road drivers or transferred from the city to the road by East Texas Motor Freight within the Southern Conference from approximately 1970 through I believe November 1972, that there were 52 such applications. And they are contained as exhibits to Plaintiff's Exhibit 18.

That of those, 12 individuals do not have a high school diploma or its equivalence which is listed as a requirement for the road driver position by the company. They are Dale Strictland, Albert Blane, Victor Williams, David Kyle, Ray S. Schmidts, Sidney Payne, Myron Greenmitchell, Lee Richmond, S. B. Davis, Roger T. Collins, Randy T. Saint and Joe C. Marris.

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[300] **Testimony of R. H. Maier**

DIRECT EXAMINATION

BY MR. RISSETTO

Q. What is your roll with regard to the company's equal employment obligations? A. I am fully responsible for its administration, setting policies in regard to that, for the affirmative action program, for all statements of policy, for the review of all of the files of the people for upgrading which ties in with the affirmative action program, the contacting of minority referral sources, the recruiting of personnel which should be minority and non-minority, contacting minority schools, close work with corporate compliance

officers from the Federal Post Office Department, daily contact with terminal management in the selection of personnel.

Q. Could you specify your work with the terminal manager. Describe it in more detail. A. Yes. Through the director of personnel that reports directly to me, we take applications when we have vacancies. [301] All of our applications are numbered so that we can keep careful count of every application that's given out when we have a job vacancy. We have certain sets of these, certain numbers assigned te the various terminals. When vacancies exist, everyone that applies for the position is allowed to complete an application for employment. When these applications are completed, it's required that the terminal manager forward those to Dallas for review to be sure that we are taking applications for vacancies that we have, to review the various race classifications or ethnic classifications, if you would like to refer to them that way, of all applicants, to make sure that we are getting a proper applicant flow, and that selections are being made on the basis of qualifications for positions.

And I review these about once a month. My personnel director, Mr. Jesse Barnes, reviews these daily as they come in. And we talk about the applications. Of those that are out of the ordinary, we review them together.

Q. Have you had any occasion to hold meetings in Dallas on the subject of equal employment? A. Yes. Each year in Dallas, we have a terminal manager or regional manager's meeting. Let's see, the first meeting was January of '71. We had the terminal manager's meeting and I had a two-hour work shop on that program. I was one of seven divisionse who handled the work shop. And this work [302] shop was devoted to the selection and upgrading of personnel and about 25 per cent of that specifically dwelt on the affirmative action program of the company and the procedure that the terminal management was to follow in that program. Then in 1972 at the general manager's meeting, we also had a similar program, and we set the divisional

goals of each division of the company, training and personnel being one of the divisions of the company. And one of the prime divisional goals at that meeting and throughout the year was increased activity on our affirmative action program for the year 1972.

MR. RISSETTO: May I approach the witness, Your Honor?

THE COURT: Yes.

THE WITNESS: I hadn't finished.

MR. RISSETTO: I'm sorry.

THE WITNESS: In 1973, last week, I just completed the regional manager's seminars which were held in San Francisco, St. Louis and Dallas. And again, we re-emphasized—I spent an hour-and-a-half on the selection process, how to recruit and how to select people on the basis of their qualifications, emphasizing the need for the affirmative action program and how to recruit minorities, specifically.

Q. (By Mr. Rissetto:) I show you what has been marked as Defendant's Exhibit EEEE. Mr. Maier, what percentage of the company's employees are classified as minorities?

[303] MR. HEIDELBERG: Your Honor, I'd like to take the witness on voir dire, if I may.

THE COURT: I'll overrule your objection. You will have him on cross examination.

MR. RISSETTO: Mr. Reporter, could you repeat the last question.

(The last question was read.)

A. As of the standard form 100 report submitted in 1972, 14.26 per cent were minorities.

Q. Of that percentage, what percentage were Mexican-Americans, sir? A. Approximately 67 per cent.

Q. And what percentage were Negro? A. Approximately 8.

Q. Has there been any change in the overall minority percentage during the last five years? A. Yes, there has

been a very significant change I feel, considering the circumstances of what has gone on in the mergers of our company. The records that I have dating back to 1966, which in 1966 I had only the East Texas Motor Freight Line as we knew it as the old company, and there were 10.29 per cent minorities. And the first figures that I had for the companies that were acquired in the merger were 1968. And continuing on, for instance, in 1969, the year that I came there, there were approximately 5600 [304] employees in all of the combined companies. At that time there were 11.66 per cent minorities in all of the companies combined. And in 1972 we had approximately 4,000 employees, which was a reduction of 30 per cent in the total number of employees in the company. However, the percentage profile had increased to 14.26 per cent, which I feel is significant, in fact very significant, the fact that we reduced the total number of employees by over 30 per cent. And in the years of no hiring, essential no hiring, we were able to increase our minority profile from 11.66 to 14.26.

THE COURT: During what period of time?

THE WITNESS: This was 1969 to 1972, sir. And this is particularly significant since we were essentially in a retrenching, merger situation where we were reducing the total number of employees, and you wouldn't think of it as actual hiring years. We were able to improve our minority profile, which I feel is a mark of success on our affirmative action program.

Q. Mr. Maier, what percentage of the line drivers who were hired during calendar year 1972 were minorities? A. Approximately 30 per cent line driver category were minorities in 1972.

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[305] (By Mr. Rissetto:) Mr. Maier, in San Antonio, what percentage of the work force is Mexican-American? A. Approximately 55 per cent.

Q. What percentage of the work force is Negro? A. Let's see, between—it is about 20 to 25 per cent approximately.

Q. In the State of Texas, what percentage of the work force is Mexican-American? A. About 8 per cent approximately.

Q. What percentage is Negro? A. About 12½ per cent. [306] Q. In your capacity as company compliance officer, have you made contacts with employment sources oriented to supplying minority employees? A. Yes, I have.

Q. Would you describe them, please. A. We have contacted the NAACP, the SIR Organization, the Urban League. I've been in close contact with the corporate compliance officer for the system who has referred applicants to me. We've been in contact with the Opportunities Industrialization Center whom I've known for a number of years and helped get started in Dallas. I have worked closely with them. I have actually been to their facilities and talked with them personally. We've talked with various groups from the OEO who have called on us at my request at our office. Several others. I believe they are all reflected in the information that we supplied in our interrogatories.

Q. In your capacity as the company vice president for personnel and training, are you involving in the hiring process for over-the-road drivers? A. Yes, I have a final say on all—It's all under my direction.

Q. Would you describe the hiring process from the start, the date of hire, please. A. Yes. When we feel that new road drivers are warranted [307] in a particular location, this falls under the responsibility of the vice president of transportation. When he authorizes vacancies to be filled, he notifies me, he notifies the director of safety and he notifies the terminal manager at which the vacancy is to be filled. Our process then is to recruit and take applications for employment. This is the primary responsibility of course of the terminal manager. But we send in our district safety supervisor to assist in this program since they are

the ones that are responsible for the safety program and the in-cab training and supervision of the line drivers. Sometimes if we had say four or five line drivers that we wanted to hire at a particular location, we may send two district safety supervisors in to recruit. These district safety supervisors are instructed to particularly seek out minority referral sources through the various state employment commissions, through such organizations as the Urban League, the National Association for the Advancement of Colored People. Where they have a SIR organization, they are instructed to contact those. They are also instructed to contact our own employees, both our minority employees and our non-minority employees to ask them for help in sending applicants to us. One of your best sources of applicants, regardless of what type job or what level is the personal referral.

Q. Focusing on the terminal manager, what is his roll [308] in the over-the-road driver hiring practice? A. His roll is the responsibility for seeing that the application is properly taken, completed, the local reference checks are made, checking to see that the individual applicant meets the company qualifications and falls within our policy guidelines for affirmative action and selection. When all of this is done, it is his responsibility to forward this information, either positive or negative, to the corporate office; at which time it is received by the director of personnel, who personally reviews each one of these applications to be sure that they are properly completed, to make sure that the individual meets the qualifications as set up. Those individuals that are minorities, he discusses with me personally immediately when they come in for my review as a part of my function as the compliance officer.

THE COURT: Mr. Maier, when you say "terminal managers have the responsibility of receiving these applications," does that mean that any terminal whether they have line or road drivers domiciled there or not?

THE WITNESS: No, sir. Where the vacancy actually exists. If there are no line drivers at a particular terminal, there would be no vacancies, so no applications can be taken.

THE COURT: What you are saying is that every terminal manager is not authorized to accept applications for [309] line or over-the-road drivers unless they domicile them at that particular station?

THE WITNESS: Your Honor, that's correct.

THE COURT: That's what I didn't understand.

THE WITNESS: That's right.

THE COURT: I understood you to say "terminal manager," and I figure there are a great many of them.

THE WITNESS: Only when there are vacancies. And if you don't have any line drivers there, there is no vacancy.

THE COURT: I understand.

Q. (By Mr. Rissetto:) What is the company's reasoning for this policy? A. Well, we feel like that we need control on everything that goes in. The terminal manager is responsible for the profit center which is the terminal, and the employees are the basis of our operation. More than 52 per cent of our revenue goes towards paying wages and salaries. So we feel that this is the most important aspect of our business, and we need very close control.

Q. Does your company policy allow an employee to apply at one terminal for a position in another terminal in the system? A. No, it doesn't allow for that.

Q. To the best of your knowledge have any employees [310] prior to January 1972 transfered from the city to the road clasification within the company? A. What date?

Q. Prior to January 1972 and after 1954. A. None that I could find, and I looked for it.

Q. What is the company's policy with respect to the transfer between terminals and within a single classification such as city drivers? A. Well, we don't have any—

our policy does not allow that they can transfer from one terminal to another. We feel like it is good personnel practice. We train the people in the area. It has already been brought out in the testimony that our people are oriented to our customers, and it is very essential that the investment that we have in training, we don't lose.

Q. Would you describe briefly the modification of the company's no-transfer policy of January 1972. A. Yes. A little background behind that. Being in charge of the affirmative action program of the company, I was very anxious to do everything. We had had indications from our employees that they were interested in going on the road. We felt like that the exposure that they had had in recent years would mean that we had city drivers that were familiar with the equipment. And as a part of our affirmative action program, in conjunction with the other officers of [311] the company, we discussed this, and we felt like that this was a move in the right direction, and that we had reached the level that we there was a good possibility that some of our city drivers could handle road equipment with some additional training, such as that, with the exposure that they had had. So therefore, we instituted this policy on a 30-day period in the Southern Conference at terminals where we had both city drivers and line drivers domiciled. This was offered in the first part of 1972. By the way, this policy also allowed for road drivers to indicate that they would like to go to the city. It worked both ways. There were approximately 202 who indicated an interest in going from a city position to the road. Of this 202, when we had vacancies that opened on the road, we gave these individuals an opportunity to try out.

And then approximately, oh, I'd say in the Southern Conference, approximately, oh, anywhere from 35 and 50 employees tried out. Of that, five of them are currently on the road. Many of them ruled themselves out after they tried it. They said it really isn't what we wanted. And they decided not to. Others couldn't meet the qualifications, the

driving tests or they had too many accidents. Or they ruled themselves out, they couldn't be away from home, or didn't meet the age qualifications and such as this.

Q. What is the ratio composition of the group that [312] went over? A. Let's see, there are two minorities and two non-minorities.

Q. Why did the company limit the no-transfer modification to only terminals where over-the-road drivers were domiciled? A. Well, this was based on recommendations that were made by myself primarily. Selecting personnel is not a real easy thing. It's a very complex thing. When you take someone and put them on a new job, there's a readjustment program to start with. And to take an individual out of the community where they have lived for many years and established themselves, put them on a new type of job, plus remove them from their familiar surroundings, this changes their whole life style. And we are interested in people being successful when we put them on the job because we invest a lot of money in training them, and we just can't afford to lose this training that we have had. And we feel like that this is sound personnel policy. And it was based on my recommendation from a personnel policy and selection point of view.

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CROSS EXAMINATION

BY MR. HEIDELBERG

[320] Q. (By Mr. Heidelberg:) Have you used any of the [321] other Mexican-American road drivers as referral source? Have you contacted them directly? A. Have I? I have not.

Q. When did you first find out, if you have, that the Plaintiffs in this lawsuit, in addition to Trinidad Gomez, have filed application for road driver positions with East Texas Motor Freight? A. I first learned of that letter in the late winter or spring of 1971.

Q. Have you taken any action with respect to those applications? A. I don't know what your definition of "ac-

tion" is, but I consider that I have taken action. As soon as I learned of them, I pulled their files. I reviewed them very carefully. I contacted terminal management at San Antonio and discussed them with them. I saw that under the circumstances that they were not in a position as such that we would consider their applications. They were city drivers. And the policy has already been testified to, it is a no-transfer policy. I think that's already been established. So the action necessary as the affirmative action coordinator was to review the file and investigate thoroughly what had taken place, which I have done. So I consider I took appropriate action.

Q. The end result was that they were not considered [322] for road driver positions based upon your no-transfer policy, is that correct? A. Based upon company policy. Yes.

Q. And that company policy is the no-transfer policy? A. Yes.

Q. I believe we have had testimony from Mr. Cloer on deposition and also Mr. Asbury yesterday that the application that was filed by the Plaintiffs and Mr. Gomez here as a matter of course should have been forwarded to Dallas. And you have testified contrary to that. A. Yes, sir, I'll give you an explanation if you would like, as to what took place. We mentioned the merger situation of our companies. When the companies were merged together, there were no personnel policies of the companies that we took over. There had been no training of terminal management in these other companies. Mr. Sager was one of the individuals that came from the Valley Copper State System. As I testified, he came in as terminal manager in San Antonio in the summer of 1970. He was not familiar with the policies and operating procedures of East Texas Motor Freight which was the parent company. And I am sure that he was not aware at the time, even though I am sure that there were people there that were aware. Coming in to a new company and everything as he was, he was not familiar with our policies and procedures, that all of this information is to

be forwarded [323] to the corporate personnel office. And I feel sure that this is the reason that he did not forward those letters to the corporate office. However, had he forwarded them, nothing would have changed because our policy that was established does not allow for transfer. So as far as any damage having been done, there wasn't. But we police these very carefully, and when I learned that those were in the file, I had every file in the San Antonio terminal reviewed to be sure that everything that was there was in the corporate office personnel department. We have a policy. We don't bat 100 per cent, but we bat pretty good on it.

Q. So based upon the fact, regardless of whether they applied or not, they wouldn't have been hired because of the no-transfer policy, is that correct? A. That's correct. There might have been other reasons that would have disqualified them too. I don't know.

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[327] Q. But you can't testify as to that from your personal memory based on this exhibit? A. No, I couldn't, not from personal memory, no. I know where various concentrations are. I know that. I have an over-all view. For instance, I know that 75 per cent of the employees here at San Antonio are in the minority classification group. I know that approximately 45 per cent in Houston, Texas are in the minority group. I know things like this. I know where the concentration areas are. I don't try to remember the exact number in every terminal location.

MR. HEIDELBERG: Your Honor, I renew my objection to the admittance of Defendant's Exhibit EEEE.

THE COURT: I don't think it has been offered.

MR. RISSETTO: We offer the exhibit EEE at this time.

THE COURT: I'm going to overrule the objection. I want to look at it. For whatever help it may be to the Court, I'm going to receive it for that limited purpose. I believe he testified he made it from the company figures. [328] He has relied on it here in giving his testimony. I would like

to have it as part of the record for whatever help it might be to me one way or the other. I will admit it and I will give you an exception.

MR. HEIDELBERG: Yes, Your Honor.

THE COURT: Any further questions?

MR. RISSETTO: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. RISSETTO:

Q. Are you familiar with a gentleman by the name of Pedro Perez? A. Yes.

Q. What is his position with the company? A. He's the director of traffic. And those of you who are not familiar with the traffic function, the traffic function is possibly one of the most, if not, the most important position in our company. It is a price fixing function. It is one of our top executive positions. It pays in excess of $20,000 per year. Mr. Perez is a Mexican-American that I recruited from Arkansas Best Freight Systems back in 1970. I recruited him as a government sales representative. And I was instrumental in his promotion to director of traffic when that position became available.

[329] MR. RISSETTO: Thank you, Mr. Maier, no further questions.

RECROSS EXAMINATION

BY MR. HEIDELBERG:

Q. Mr. Perez was hired what time? A. In 1970.

Q. Do you remember which month? A. Oh, it was the early part of '70. It seems to me like it was March or April, something like that. I had to work on him a while before I got him to come with the company.

Q. Are there any other Mexican-American supervisory personnel in the Dallas corporate headquarters? A. Let's see, in the Dallas corporate headquarters. No. At the Dallas

Terminal, we have an office manager there, Mr. Noland Rodriguez.

Q. At the Dallas corporate headquarters, how many supervisory positions do you have? A. I guess supervisory positions, we have approximately 30 supervisory positions.

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[332] MR. PENSHORN: Your Honor, if it please the court, I think we have reached an agreement on a stipulation which will dispense with Mr. Shafer's testimony except perhaps for a couple of additional questions.

The stipulation reads as follows, Your Honor: The parties stipulate that the witness R. C. Shafer would testify as follows, and that same may be entered as testimony in this case.

Stipulation Number 1. The plaintiffs contacted R. C. Shafer regarding road jobs at East Texas Motor Freight, and he, Shafer, in turn contacted Everett Cloer, director of [333] Industrial Relations for East Texas Motor Freight who told him that if they domiciled road drivers in San Antonio, that East Texas Motor Freight would consider the plaintiffs and city drivers for road driver positions.

(2) Neither the plaintiffs nor any other East Texas Motor Freight employees ever complained to local 657 that East Texas Motor Freight discriminated against Mexican-Americans and Negros or that East Texas Motor Freight did not have any Mexican-American or Negro road drivers.

(3) No plaintiff has ever requested local 657 to take any formal action against East Texas Motor Freight's no-transfer policy.

(4) Under the bylaws of Local Union 657, only the affected members of local Union 657 working under the National Master Freight Agreement and the Southern Con-

ference City Supplement within the jurisdiction of Local 657 at special meetings can make demand from Local 657 to the negotiation committee for contract changes, and none of the plaintiffs or any other employees of East Texas Motor Freight has ever

(a) complained of discrimination by East Texas Motor Freight against Mexican-Americans and Negros.

(b) requested one contract for road and city drivers.

(c) ever requested the right to carry city seniority to road jobs.

[334] (5) Local 657 has never signed a collective bargaining agreement covering road driver jobs with East Texas Motor Freight.

(6) Since December 1970 the majority of the seven-man executive board of Local 657 has consisted of Mexican-Americans and Negros.

THE COURT: Is that the stipulation now, Mr. Heidelberg?

MR. HEIDELBERG: Yes, Your Honor.

THE COURT: Now, do you have anything further to offer?

MR. PENSHORN: I have nothing further, Your Honor.

THIS COURT: In other words, this dispenses totally with Mr. Shafer's testimony?

MR. HEIDELBERG: On direct, Your Honor.

THE COURT: On direct. You want to cross?

MR. HEIDELBERG: Very shortly.

THE COURT: All right Mr. Shafer, would you please submit yourself for cross examination.

Ray C. Shafer

being duly sworn and testified as follows:

CROSS EXAMINATION

BY MR. HEIDELBERG:

[335] Q. Mr. Shafer, you were approached by Mr. Modesto Herrera and Mr. Sadrach Perez with reference to obtaining road driver jobs, were you not? A. Yes, I was.

Q. On how many occasions, if you can remember? A. Mr. Herrera and Mr. Perez approached me on one occasion together.

Q. It is also correct that Mr. Herrera at one of the regular meetings stood up and made inquiries as to how he could obtain a road drivers job, is that correct? A. May I go into the conversation?

Q. We are talking about now at a regular meeting. A. It was at a meeting that Mr. Herrera brought up the subject of the road drivers possibly being domiciled in San Antonio because of the merger of VCS and East Texas. And at that time he asked me if it would be possible for the city employees or city drivers to be hired as road drivers for East Texas in the event that there were road drivers domiciled in San Antonio. I told him at that time that I would find out from East Texas if that would be possible.

Q. And following that, did you contact any person at the East Texas Motor Freight concerning the application? A. Yes, I did.

Q. Who was that? A. Mr. Everett Cloer.

[336] Q. About what time was this? A. It was in 69, sometime in 69. I can't remember exactly in 69. It was after I came back from the International Union. And April or May sticks in my mind, but I'm not real sure whether that's correct or not. But it was somewhere in the neighborhood of April or May, 1969.

Q. Do you remember that Mr. Cloer indicated that he would contact the Terminal Manager in San Antonio with

East Texas Motor Freight and make an application available to them for a road drivers job? A. Not at that time. No, I don't believe so.

Q. Did that occur at any time? A. Yes, sir.

Q. Would you please tell the court when that was? A. When Mr. Herrera and Mr. Perez were in my office on the second occasion and it was sometime in 1970, and it was somewhere in the neighborhood of August because of the application that they made, they told me at that time that they would like to transfer to the road in another area. And I told them that I was surprised to hear that they wanted to transfer to some other city. So I said "Well, I will contact them in regard to this." And I did contact Mr. Cloer asking him at that time about these fellows transferring to another area where road drivers are domiciled.

Q. Did Mr. Cloer indicate to you that he would contact [337] Mr. Sager and that the application would be made available? A. After some conversation, he agreed to it.

Q. You heard the stipulation between the parties that Mr. Penshorn read. One of those stipulations indicated that no formal action was ever requested of you by any members, to request that the seniority rosters be dove-tailed, is that correct? A. No action, no formal action has ever been requested by anybody that I take any formal action of any kind.

Q. Is it true that on numerous occasions you have told your members that because of the dual lines or the separate seniority rosters they would not be allowed to transfer with their seniority? A. No, sir, that is not right.

Q. What did you tell Mr. Herrera and Mr. Perez concerning East Texas Motor Freight's policy after they asked you about the road driver positions? A. At which time, Mr. Heidelberg?

Q. Well, at any time. Let me ask you this question: Did you ever tell Mr. Herrera or Mr. Perez or any other ETMF employee that they would not be allowed to transfer to the road because of the no-transfer policy maintained by East Texas Motor Freight? A. No, sir.

Q. What reason did you give to them for the fact that [338] they were not allowed to transfer? A. After the first meeting I had, I reported back to the people at East Texas. Mr. Cloer's conversation telling me that in the event that they domiciled road drivers in San Antonio, that they would consider the city employees as road drivers in the event that they needed additional road drivers.

After the second meeting where Mr. Perez and Mr. Herrera came into the office and talked to me in regard to transferring somewhere else, at that time I told them that I would try to get them an application for employment on the roads. I don't believe that I got back in touch with them. It is possible that I did. However, the terminal manager did get in touch with them and made available to them the applications or some form of application. So, they got the word through some type of communication. And I don't remember what the communication was at this time.

Q. But you never communicated either to the Southern Conference or to the International Brotherhood of Teamsters the fact that the separate seniority rosters kept or maintained your city drivers in city driver positions? A. No, sir.

MR. HEIDELRERG: I pass the witness.

MR. PENSHORN: We have no questions.

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[339] THE COURT: I will talk to you about that in a minute. Do all parties close?

MR. PENSHORN: Yes.

MR. BAAB: Yes, sir.

THE COURT: All right. Now, it seems clear to me, gentlemen, that the evidence shows that the union contract and company policy which admittedly seems to discourage transfer from city to line driver or across-the-road driver and vice versa, and actually in a sense prevents favorable

action not only on the Plaintiff's application for transfer without loss of some seniority or other penalty where non-domiciled drivers are involved, but it seems to me that the evidence suggests that this is done irrespective of race or national [340] origin. Now, that's the thing that's troubling the Court.

Now, what is the evidence is discrimination?

(1) Perhaps Mexican-American, Negroes, Angloes and all other city drivers who are employees, or city driver employees are bound by what is referred here by all parties as the no-transfer union contract and company policy. Now, we have evidence of that.

All right. Now, the other evidence, secondly, the small percentage of Mexican-American line drivers and the large number of city drivers. Now, this seems to suggest that there must be discrimination against Plaintiffs because of their race. But is this the only evidence of discrimination we have, Mr. Heidelberg?

MR. HEIDELBERG: Your Honor, as the Plaintiffs indicated when they opened their case, we didn't intend or could put a witness on the stand that had been told expressly he was not being given a road driver's job because of his national origin or because of his race. Now, our proposition——

THE COURT: But you do have two things here. One, you have a locked-in policy or a no-transfer rule that is in the union contract, and it is a part of company policy. Everybody admits that are parties to the contract that that is the union contract, and the company feels like it is very necessary.

All right. Now, is that evidence of discrimination [341] when taken with the fact that there is a very small percentage of Mexican-American line drivers in the state? Bear in mind you have opposed to that the fact that the company policy and the union contract normally contem-

plate that these people are employed where they are domiciled if they are line drivers. It's not true for city drivers.

Now, who has the burden of proof in this case? I am familiar with the normal rules with reference to burden of proof in every other case except civil rights cases. And there, I don't know. The plaintiff normally speaking has the affirmative of establishing by a preponderance of the evidence all of the essential elements of his case before he can recover. Civil rights cases, it will shift right in the middle of the stream on me.

Mr. Justice Berger in the Swan case says in all of these school cases that the burden of proof normally, if there's a fairly equal distribution, it's then upon the Plaintiff to establish that there has been an invidious discrimination against the ethnic minority involved where there's a complaint leveled. However, he says, when it gets to the unitary system, and it gets to be all of our race, then the burden shifts to the school board to establish by a preponderance of the evidence that there is no discrimination, or where the percentage begins to go against what the citizen percentage is or the ethnic makeup of the entire school district.

[342] If one of the elementary schools, for example, gets fairly close to one race, then the burden shifts, according to Mr. Justice Berger in Swan, and that's a civil rights case, to where then the school authorities have to come forward with credible, strong evidence, which I can only reason to be preponderance of the evidence.

Give some thought to who has the burden of proof in this case. And does the same, more or less, doctrine, apply that was announced in Swan and reiterated in Winston-Salem School cases that when there remains a large ethnic disproportionate or percentage, and it's getting pretty close to where only the people in this one line, line drivers or across-the-road drivers are all of one race, does that suggest, like the school cases, that the burden shifts. And if it does shift, has the company failed to meet its burden?

Many school cases, you can find that almost a 100 per cent Mexican-American, but the school board has and can and often does come forward and shown that there is no discrimination, it has met its burden.

Now, those generally are things that have occurred to me in the trial of these three cases. Is there anything, Mr. Heidelberg that you feel like I don't understand about this?

MR. HEIDELBERG: Your Honor, I don't want to [343] belabor——

THE COURT: I don't want you to make a prolonged argument, but I would like to have your views briefly.

MR. HEIDELBERG: Well, briefly, I think what we had to do was come forward and show, and this is in the complaint, the area that we were concerned about, and that was the State of Texas that is encompassed by the Southern Conference of Teamsters Collective Bargaining Agreement. We felt that the jurisdiction of the Court extends throughout the State, and I think that is true. We felt that when we came forward and showed the Court that prior to the hiring—excuse me, prior to the filing of the charges—

THE COURT: Prior to the hiring, I think you have a stipulation in the record that there was no discrimination.

MR. HEIDELBERG: Well, I meant filing, Your Honor, instead of hiring. That was a typographical error on my part. What I meant to say was that prior to the filing and the receiving of the charges of discrimination——

THE COURT: There's no de jure discrimination. If there is any de facto segregation, I think in these cases they are permitted. There might be discrimination, but it wouldn't be intentional discrimination.

MR. HEIDELBERG: Your Honor "intentional" under Title 7 has no significance.

THE COURT: I understand.

[344] **MR. HEIDELBERG: I don't want to belabor the point, but we feel that by showing that there was only one Mexican-American and no Blacks employed prior to their receipt of the charges, and that one Mexican-American was forced upon them by virtue of the acquisition of another company, and that was subject to the Collective Bargaining Agreement, that they, on their own initiative, hired no Mexican-American line drivers in the State of Texas, no Blacks in the State of Texas, zero on both counts, that that establishes the prima facae [sic] case in itself of discrimination. And the cases I think are abundantly clear on that point.**

As we will indicate in our brief, we feel that the case of Bane (sic) versus the Roadway Express——

THE COURT: Well, do you feel that's a law point or is that something that the Court is going to have to resolve as a fact question?

MR. HEIDELBERG: Your Honor, I think the burden of proof —and the question is going to be whether or not we came forward with a prima facea [sic] case, and whether they rebutted it by showing business necessity or——

THE COURT: You think there has been a fact issue raised here?

MR. HEIDELBERG: Well, actually I think Mr. Weiss is correct in his pre-trial order when he says most of the issues involved here are legal.

[345] **THE COURT: All right. Now, Mr. Smith testified, and of course he's representing the International Union, and he testified that even though there were no Black line drivers or Mexican-American in the beginning, that was explained in most instances in the Southern Conference by the fact that while the jobs were available and the union did not discriminate against them because of their race or national origin, that they were not able to have the facilities. They didn't have the Housing Act in 1952 and 1954 to**

help them. And under those circumstances, they didn't apply.

Now, under those circumstances, there was no discrimination, according to Mr. Smith, up until the passage of the Housing Act, Equal Housing Act, until the facilities were made. They couldn't get them to apply because they didn't want to be embarrassed or humiliated. Now, that's the International Union's position with reference to that.

Now, what they are doing there is trying to explain why there is a disparity in the percentage. Wouldn't that to some extent explain perhaps why the disparity was great?

MR. HEIDELBER: No, Your Honor.

THE COURT: Of course, you have got to also remember that in Dallas, the Mexican-American population is very small. It's so small that it's not recognized there in Dallas, according to the census. Now, this is in the re-apportionment case that Judge Justice and Judge Goldberg [346] and I sat on. And to our amazement, the evidence was undisputed, according to the last census that the Mexican-American population in Dallas was hardly definable as a minority. It's such a small percentage. Of course, they're taking the position that those drivers are employed out of Dallas, or places where there are not large concentrations of Mexican-Americans.

By the same token, the Black population is a far greater factor than it is in Bexar County. I think Bexar County is 50.1 now. Each census period it is predominantly getting greater in favor of the Mexican-American. And the Anglo is decreasing, and the Black is growing a little bit. But I'd say as of the last census, my recollection was, and I'm just speaking from memory, I think it was 50.4, percent. My law clerks probably have a better memory of this than I do. 42 or 43 percent I believe were Anglo, and five or six were blacks. Now, that's in Bexar County.

But in this particular situation, Mr. Heidelberg, you have the city drivers where they live, over 50 percent Mexican-American, which very closely approaches it on city drivers. In all three of these cases, it's strikingly similarly that the percentage of city drivers where they are domiciled, have a striking comparison to the percentage of Anglos and Blacks that are domiciled in San Antonio. Now, those are points that are occurring to me that I would like to have you address yourselves to.

[347] MR. HEIDELBERG: Well at the same time, Your Honor, you can't compare zero to any percentage figure. And also we feel of course that our people made application, and those applications ended up in Dallas and the company completely disregarded them. I think that makes this case a little more strong, a little stronger perhaps than some of the cases that have been before the court.

THE COURT: You did have applications in this case which in some of the other cases they did not have.

MR. HEIDELBERG: Yes, Your Honor. They were informed that all they had to do, rather than go to Dallas, which they could have done I suppose also, but they were informed by management to file this application and they would be considered for road driver jobs. It is in the stipulation. They haven't been considered. That in itself indicates to me that——

THE COURT: Of course, you got to also bear in mind the testimony that's used to rebut that was that the applications were there. They looked at them. They considered them to the extent that they found people not qualified because they didn't live there and they wanted people there at the local level who were domiciled there. And they explained the reason why they had to have a man in Pecos, why they had to have a man in El Paso and why they had to have line drivers other than in San Antonio. Well any-

way, that's [348] generally. Now, do you have anything further that you want to add?

MR. HEIDELBERG: I want to say that basically Mr. Maier did testify that the ultimate reason for his refusing to consider the applications was because of the company's no-transfer policy. And I won't belabor the Court with——

THE COURT: That's right, he did say that. But then he added on his own, sort of, well, that perhaps may not be the only consideration. We did look at the. The no-transfer policy and the fact they didn't live there and that sort of thing was the primary thing. But on the other hand, he said, about the applications, there might be other things too that might disqualify them.

Well, any way, I am trying to point out the weaknesses of your case, if there are any, so that you can——

MR. HEIDELBERG: Yes, sir, I think we all have anticipated the various things.

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[17]

[Incorporated Testimony of W. C. Smith]

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W. C. Smith.

called as a witness by the Defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. GILLESPIE:

Q. Would you state your name for the Court, sir. A. My name is W. C. Smith.

Q. Where do you live? A. I live in Jackson, Mississippi.

Q. What is your present job? A. I am presently employed by the International Brotherhood of Teamsters in the capacity of General Organizer.

Q. Do you hold any other positions a this time? A. At this time, no.

Q. Would you briefly outline your history of employment, starting with your first job in the trucking industry. A. I became a member and was employed as a road driver [18] in August 1948. I drove a truck for a number of years. In 1953 I became a job steward for the union. In 1954 I became a vice president.

Q. Excuse me sir, which union was this with? A. Local 891, Jackson, Mississippi. In 1954 I became vice president of the local union, continuing to drive a truck, I then worked part-time for the local union up and through the year 1965. I became its president. I remained its president until 1969. I then accepted a job with the International Union, and I hold that job today.

Q. All right. Would you briefly outline your roll that you now perform as the general organizer for the teamsters, for the International Teamsters. A. I work on an assignment basis. I am assigned to various jobs by the general president, Frank Fitzsimmons. I am also assigned to the Southern Conference. I help negotiate contracts, assist local unions in strikes, hear various grievances, and various other items, trusteeships and so forth.

Q. You state that you help negotiate contracts? A. Yes, sir.

Q. How long have you been doing that, sir? A. From 1948, from the standpoint of a member. I participated on the member level at that time. In 1953 I participated in the job steward roll. And from that date forward, even as the vice president of the local union before becoming [19] a full-time employee of the local union I participated in various contracts.

Q. Would you say that you are among a handfull of people with like experiences in the trucking industry from the employee standpoint, from the teamster's standpoint? A. I believe that to be true, sir.

Q. Now, I'd like to ask you a few questions about the internal structure of the various teamster unions. First of all, what is the lowest level of organization among the teamsters? A. The teamster local union itself.

Q. What basis of membership do they have? A. The basis of membership is determined by occupation. Is that what you mean? Such as freight——

Q. I want to ask, when they make a decision, when a local makes a decision, is that decision made by a vote of the membership or by a delegate situation? A. It is a membership organization, and that decision is made by a majority.

Q. A majority vote of the members of that union? A. Involved, yes. A majority vote of the members involved.

Q. Okay. Now involved in this lawsuit is the Southern Conference of Teamsters. What system is involved there for making decisions? Is it a delegate or membership [20] body? A. The Southern Conference is comprised of a delegate body who are elected.

Q. Who elected these delegates? A. They are elected by members of the Executive Board of each local union within the area involved.

Q. Does each local union send delegates to the Southern Conferences? A. Yes, two delegates per local.

Q. Now, also in this lawsuit is the International Brotherhood of Teamsters. Are they a delegate body? A. Yes, sir.

Q. Where do the delegates come from? A. They are comprised from local unions throughout the United States. The number of delegates allowed by each local union is determined by the membership in that particular union on a pro-rata basis, so many members entitles them to one delegate, and for each 650 after that, another delegate.

Q. Does each local union have at least one delegate to the International? A. Each local union is entitled to at least one regardless of the membership.

Q. Would you tell me roughly and approximately the size of the teamsters in terms of membership. How many members are covered by the contracts the teamsters negotiate? [21] A. In excess of 2,000,000.

Q. Would you tell me approximately how many local teamster unions exist throughout the country? A. This will vary somewhat on a time basis because of mergers and because of additional charters. But a good rough figure is in excess of a thousand.

Q. I want to discuss briefly the history of bargaining within the teamsters. This has been gone over to some extent by Mr. Penshorn, and I'll try not to duplicate. Can you tell me if now there is national negotiating? A. Yes.

Q. Are there advantages in having a national negotiation process? A. Yes.

Q. Could you specify those advantages. A. A very good example is here before this Court. Yellow Transit operates from the Canadian Provinces to the West Coast. Here is a local union that has testified that their membership and employees with this company is in the neighborhood of 50. If they were negotiating singularly and by themselves here, their strength or threat of a strike would be practically none. Yet by national bargaining, and you are speaking here of a freight line again of great size where testimony has indicated that they have at least 10,000 employees, that when we now sit down to negotiate with them on a national [22] basis, the economic bargaining power is far greater.

Q. Do the trucking companies themselves negotiate on a national basis? A. Most of the employers do. Yes.

Q. Would it place the local unions at a disadvantage if they were not negotiating on a national basis and the truck companies were? A. Very definitely. Yes, sir.

Q. I want to talk briefly about the mechanics of bargaining within the trucking industry, within the teamster locals, etc. I think Mr. Penshorn again covered what happens at the local level. Moving from there then to the Conference level, is it true that proposals are submitted from the local unions to the Southern Conference of Teamsters? A. That is the first step in which the proposals are sent to.

Q. And what does the Southern Conference of Teamsters do with these proposals? A. At that time, the proposals from each local union within the conference are reviewed. In many cases, you get duplications. For example, a local union in San Antonio will make the same proposal on a particular item as one in Dallas might. This is a clerical process. And they are then transposed and condensed down to the same proposal rather than duplicated proposals. And on occasions, a proposal made, [23] that on its surface it is frivolous or impossible, that is withdrawn and not presented to the employer.

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[24] Q. So after the Southern Conference reviews the proposals, does it then submit them to Washington? A. Yes.

Q. To what body does it submit them? A. This is submitted to the International Union and the full conferences submit all of the proposals to the International [25] Union.

Q. Now, what happens after that, to these proposals? A. Each local union is then notified that the proposals have been completed, they have been reduced to a proposal form, typewritten. Each local union is notified to send two delegates to Washington, D. C. At that point, the delegates have the contract proposal read, explained to them, explained that this will be carried before the employer, or if they would like anything else added to it or delete anything in those proposals. And then it is voted on by those delegates from the local union body.

Q. Assume that the vote is affirmative, what then happens? A. If the affirmative vote is to present that proposal to the employer, it is then proceeded through negotiations and through the various committees to submit that proposal to the employer and employer groups.

Q. Who does the negotiating? A. You are talking here about a contract in various supplements and areas which covers 450,000 people. So the largeness of it and the complexity of it must be taken into consideration. You have

various groups that do negotiations of various articles. For an example, last time you had a group of people that negotiated only on the National Master which is the upper portion of all of the contracts. You had [26] another group that negotiated on the sleeper cab section only of the road contract. You had another group that negotiated only on the piggy-back section. I, myself, was assigned as the chairman for both the Southern Conference-City, the Southern-Conference-Road, the Southern Conference-Office and Shop Committee.

Q. Does the national negotiating committee play a part in this process. A. The national negotiating committee in the last negotiations conducted their negotiations on the lower floor or first floor because they are in constant contact with the different areas and the different supplements. And here you must recognize that you are talking about the Western Conference, the Eastern Conference, the Southern Conference. And they keep in contact with the progress that each one are making in their supplemental areas.

Q. How is the national negotiation committee formed? A. By appointment.

Q. And who generally makes up this national negotiation committee? A. For an example, the Southern Conference, you are appointed by the area director, and that is with some reference to a cross reference of the Southern Conferenc, with local presidents coming from various local unions and trying to receive a cross section of the whole Southern Conference. [27] Not all of them from Texas or all of them from Florida, but trying to receive one or more people from each locals.

Q. Does the national negotiation committee operate with the threat or power of attorney from the local unions? A. Yes, sir.

Q. Why are members of the International Brotherhood of Teamsters and members of the Southern Conference of Teamsters selected to be part of the national negotiation

committee? A. It is my belief that a person working for the International and the Southern Conference has at various times the opportunity to travel to different localities within the Southern Conference. You will know the problems in Florida as well as Texas, where a man who resides such as in San Antonio may be only concerned with the problems at this location, and only attempt to negotiate problems and answers for this location. By having a Conference or International organizer there, he is able to sort of neutralize and have an unbiased effect on the entire area.

Q. Ultimately the contract that is hammered out in negotiations is submitted to the union members at the local level, is that correct? A. Yes, sir.

Q. And if a majority of those people vote against that contract, do negotiations begin again? [28] A. It is possible. If a majority of the people reject a contract, the negotiation committee then has the right to go back into session with the employer. However, the general president can order that a strike vote be taken and a strike vote would be conducted.

Q. Does the International Union approve for form, any contracts negotiated by the national negotiation committee? A. I do not understand the question in its form.

Q. Does the International Brotherhood of Teamsters review the contract in any way? A. Review it?

Q. Yes. A. They have a right to review any contract. The Southern Conference has a right to review any contract on the basis of keeping one local onion from taking away another local union's jurisdiction or negotiating a substandard contract.

MR. GILLESPIE: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. (By Mr. Gillespie:) I have handed you what is marked as Defendant's Exhibit HHH, an exhibit by the International Brotherhood of Teamsters and the Southern Conference of Teamsters. Would you read what is marked Article 12 Section 11C. [29] A. "Approval or disapproval

by the International Union, Area Conference or Joint Counsel of wage scales or other agreements is not intended to impose any liability on such organization or its officers. And such organization and its officers do not assume any liability of any nature to any person or persons for such approval or disapproval."

Q. Mr. Smith, is that intended to reflect the delegate or agency status of the International and the other organizations mentioned in that paragraph? A. Yes, sir, in my opinion.

MR. GILLESPIE: May I again approach the witness?

THE COURT: Yes, you may.

Q. (By Mr. Gillespie:) Now, I would like to ask you some questions relating to the history of the development of separate seniority lists for road, city, garage and clerical units within the trucking industry. Is it a fact, Mr. Smith, or do you know, whether the trucking industry was organized on the basis of various separate seniority units? A. Yes. Usually terminal by terminal, city by city.

Q. And were units developed for road, city, garage and clerical workers? A. Yes.

Q. What was the historical basis for organizing separately instead of on one merged seniority list?

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[30] Q. (By Mr. Gillespie:) Would you tell me, Mr. Smith, whether one reason for the development of a separate seniority list for these various categories of workers was because it gave benefits to these workers that wouldn't be had through a merged seniority list, a single seniority list? A. Benefit?

Q. Yes. A. The latter part of the question again.

[31] Q. Yes. Not just because it helped in organizing, effectively organizing these units, but also because it gave some realized values and benefits to the individual employees themselves. A. You have a benefit here that has not been brought out in this particular case. The testimony

here is that some 40 or 45 people are employed in San Antonio, Texas, and they enjoy terminal seniority. Now, that means that a person on layoff from another area cannot come and take their job away from them, even though they may have more seniority in the city of Dallas or over-the-road at Bachelor Springs. And in this particular case, there are people on layoff in Canada. At one time it was the Adalay (sic) System and it has just been purchased by Yellow. So therefore, those people cannot come to San Antonio and bump these people and knock them out of a job even though they might have more seniority.

Q. Was the recognition of appropriate bargaining units by the national labor relations board at all responsible or tied in with the historical development of separate seniority units? A. Yes. I'll give you one actual example, as short as I can. Howard Hall Company of Birmingham, Alabama, the majority of the city people desired to join the teamsters union. They joined the teamsters union. A contract was negotiated under an appropriate unit established by the National [32] Labor Relations Board. That was a city unit. The road drivers today do not elect to join the teamsters union. They do not belong to union membership and are not covered by contract. If you were to say that this was one unit, we would represent a majority of the employees and we would then be placed in the position of forcing the drivers to be covered by a contract, the road drivers who do not desire to do so and have expressed a desire not to belong.

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Q. (By Mr. Gillespie:) Mr. Smith, can you state whether racial considerations had anything to do with the organization on separate seniority lists? A. No, sir.

Q. Would you tell me whether there was any trend to have uniform Anglo on roads and minorities on city seniority lists? A. No.

Q. Can you think of any examples in which road drivers from a long time back have been black, or minority workers. A. One specific instance is Mid South Memphis, Tennessee, a predominant number are black. They have been black for many [33] years and they are still black.

Q. Are you familiar with the history of the Southern Trucking Company? A. Southern Forwarding?

Q. Yes, Southern Forwarding. A. Yes.

Q. Can you tell me about that. A. Southern Forwarding has a predominant number, and I gave you the name of the wrong company. Strike Mid-South. It is Southern Forwarding.

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[34] Q. Now, I'm going to ask questions concerning racial discrimination as reflected in the Teamsters International Southern Conference. Are you aware of the position of the Southern Conference of Teamsters and the International Brotherhood of Teamsters with respect to racial discrimination? A. I know that for many years, the policy of the Southern Conference and the International Brotherhood of Teamsters has been no discrimination of any kind. The very lawsuit, the title of the act, the lawsuit that is brought about here, the International Brotherhood of Teamsters lobbied for that act and tried to seek its passage in Congress.

Q. Can you tell me of any efforts by the Southern Conference of Teamsters to remedy the problems of getting minority workers into road driver positions? A. On an individual effort by local unions or by Conference?

[35] Q. I would like to talk about by conference. A. By conference. For many years there was a man by the name of M. W. Mullow (sic) who was the director of the Southern Conference of Teamsters. And he was very interested in the plight of the socalled minority. He personally instructed the local unions for many years there would be no discrimination of any sort in any manner within the Southern Conference.

Q. Can you tell me whether the Southern Conference has made any recent proposals or is contacting officials in the

trucking industry to allow city drivers to work on the road? A. If you go back three years ago, the word "transfer" or "move" from city to road or road to city, was never mentioned. This was established. It had been established for many years, as the testimony here indicates, and it was never considered. Now for the last year or two years, you constantly hear city employees requesting to go on the road. Hearing th[illegible]equests and with the present language of the contract, barring a compulsory move by the union to force an employer to compulsorily allow a man to go, local unions have been instructed to approach various employers and ask them that when they do need a new road driver, they now need an additional road driver, to go to their city employees and offer him the opportunity to go to the road. If he so desires [36] to go to the road, let him then go to the road before they hire a man from the street.

Q. Would that be done on the basis of their city seniority? A. Well——

Q. I mean would the offer of a road job go to the people first with the highest city seniority? A. For clarification, if they needed one road driver, then they would go to the most senior man on the city and ask him first. If he declines, then go to the second man. But I want you to understand that we are asking employers to do this and we have no way to force them at this time.

Q. Has the Southern Conference discussed socalled retreat rights? A. Yes. We have asked the employers again, and we agree with the employers, if they offer the city man the opportunity to go to the road and become a road driver, if after 30 days he has examined the conditions, the wages, the locale in which he has to work, if he decides to change his mind within 30 days, let him come back to the City and keep the seniority which he enjoys under the city contract.

THE COURT: Mr. Smith, would he lose his seniority under your plan if he—would he have to resign as a city driver to become a line driver, and would he consequently lose his seniority? How would he fit in with the other line drivers

[37] and those who are waiting as casual drivers who are given preference and who had some seniority?

THE WITNESS: In order to answer the question, Your Honor, you have to start in reverse. First, you have to go to the casual. The road contract as separate seniority has well been established——

THE COURT: Well, the reason I asked that question is they are saying here and the testimony is undisputed that the casual line drivers, that is the field from which the line drivers are taken and they have to meet certain qualifications. Isn't that your understanding?

THE WITNESS: That's the testimony.

THE COURT: Are the city drivers going to go ahead of all of them if they want to go?

THE WITNESS: If you will let me explain. And there is contract language to back up what I'm saying. Article 3 of the National Master has reference to casuals. It says that a local union and an employer can agree to work casual road drivers on a non-accumulative seniority basis for absenteeism or vacation. Let me clarify that. It means that if a local union and a company agree that they are going to work ten casuals as road drivers, but they are not going to accumulate any seniority at all and they will not have first opportunity for employment as a road driver. Now if it is as a result of these ten casuals working, and the employer and [38] the union determine "we need one new city driver", then can then go to this top man in the city and offer him the opportunity to accept the road-driving job ahead of the ten casuals. There is contract language to back this up.

But once he accepts it, he is now accepting it on a trial basis. He has worked in the City as it has been testified here for ten years. He believes he'd like to have a road job, but he's not sure. He has never been a road driver. So we ask the employer to let him try the road driving job out for

30 days. If he doesn't like the road job after 30 days or can't make a living or it is not what he thought it was, then give him retreat rights back to the city from whence he came with his seniority and he has lost nothing.

But on the 31st day, he has now passed his probation period as a road driver, and again there's contract language to verify this, and he likes the job, he likes the conditions, so he wants to stay. Then he establishes a date for bidding purposes as a road driver effective the day he pulls his first road trip. He carries with him all of his seniority for retirement purposes, vacation purposes or any other purpose with the exception of bidding.

THE COURT: Is that being done at this time?

THE WITNESS: In some locations. Yes, sir.

MR. GILLESPIE: My next question relates to contract interpretation. We have gone into the effect of the separate [39] seniority system to some extent.

Q. (By Mr. Gillespie:) Could you tell me how one acquires seniority within a given seniority unit? A. He goes to work there.

Q. Is that the only way you can accrew [sic] seniority, for example, on the road, by working in a road unit? A. From the language of the present contract for bidding purposes, for bidding purposes, a man's bidding seniority is estabished on the basis of what day he went to work for that employer.

Q. Under the contract, can you acquire seniority for other purposes besides bidding, without working in a specific unit but by being hired by the same employer? A. All right, I'm going to pose a hypothetical instance to you. A man works in the shop for ten years as a serviceman. And now an opportunity comes to become a city driver. He would rather drive a city truck. So he moves over. And these are two separate units, two separate contracts. So now he becomes a city driver. And on the 31st day, he es-

tablishes new seniority for bidding purposes. Now, he can't outbid any former city employee, but he still has ten years seniority for vacation and retirement purposes. And the contract gives him that ten years of service towards vacation, towards retirement.

Q. Would that hypothetical apply for switching between [40] road, from road to city or from city to road? A. Yes. Because as long as he is a continuous employee of a singular employer, and the fact that an employer called in an individual and said "I will give you the opportunity to go from city to road or from road to city or shop to office or whatever it might be, but you must resign your city seniority." He would only be signing what accumulated bidding seniority he had, and the employer's letter would mean nothing towards his accumulated seniority for vacation.

Q. Are these instances of the contract true regardless of race? A. Yes.

Q. Now, are there any ways in which the contract in dispute in this case offer relief to the people who have suffered racial discrimination? A. Yes.

Q. Could you specify how relief could be obtained through the contract? A. Well, it can be obtained in several ways. One, let's say he's not even an employee of a company or the member of a local union. If he has knowledge that that employer is covered by a labor agreement, he can go to that teamsters union and the teamsters' business agent can file a grievance in his behalf even though he's not an employee and not a member. That's an extreme case.

[41] Now, if he feels that he's employed there and a member, and he feels that he has been discriminated, he, himself, through his steward or through his business agent can file a grievance to the appropriate committee. That can be filed under Article 38 which is, as you know, the non-discrimination article. It could be filed on the basis of his seniority or whatever area it might be. Maybe they didn't pay him like they did another man.

Q. Okay. Is there a statute of liminations [sic] connected with the filing of grievances? A. Yes. Basically, the grievance procedure is a creature of the contract that's spelled out in the contract. If a man had a grievance, he would have a specific length of time in which to file that grievance. But that's based on knowledge and also whether it's a continuing claim or not.

Q. All right. Could you tell me if—I'm going to use a catch-word and then explain it. If the no-transfer rule is a creature of the union contract. Now, what I mean by the no-transfer rule, is the rule that would prevent someone who is say a road driver from ever going and becoming a city driver in a company, or vice versa? Now, is that in any way dictated by the contract? A. For several days the word "transfer" has been used very loosely. The contracts do not prohibit a man transferring nor does it permit a man to transfer. It does not say that he [42] cannot. It does not say that he can. It simply says that seniority is accumulated under separate units, roads, city, office, shop. If an employee, member, desires to move from one location such as city to road and there is a vacancy, and the employer wants to hire him, and he's qualified, then that is permissible.

Q. Are the mechanics of transfer in any way affected and influenced by the teamsters themselves, or is this a matter for the employer? A. Again, you use the word "transfer".

Q. Okay. In changing from say the city to the road, would the requirements for changing from city to road be at all set by the teamsters? A. The present contract language says that the local union shall have equal opportunity to furnish people. It does not give him an exclusive right to furnish people. He would have certain rights if this failure to give employment was based on discrimination. He then would have contract language to say you're not hiring the right people.

Q. Suppose the company had a policy whereby one could go from city to the road, and that company refused to allow

a union member to go from city to the road because of his race, would that person be able to file a grievance under the contract? A. Yes. Article 38 would provide, or the article which [43] has been violated.

Q. Now, does the teamsters international have any, or Southern Conference, have any hand in setting the standards for hire, or the qualification for hire of truck drivers by any of the trucking companies? A. The qualifications established by the employer are their own as long as it doesn't violate our right of union membership or discrimination.

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[44] Q. (By Mr. Gillespie:) Is it true that health standards differ for line drivers than for city drivers? A. By law. Yes.

Q. If a person has had a history of heart illness, or [45] if a person has less than 20-40 vision, is he qualified to be a road driver? A. If he has a history of heart or high blood pressure or bad vision, the answer is he's not qualified.

Q. Is this a DOT standard that's being violated? A. It would be violated if he was hired. Yes.

Q. Could these people be qualified for city drivers? A. With a heart condition. Yes. If his eyes were less than 20-40 he could drive anything that was non-freight within the municipal area.

Q. If the seniority system included only one unit, can you forsee [sic] any difficulties because of these different health standards? A. There are far more road drivers disqualified due to health conditions under the DOT requirements, both heart, visual and health problems, who would, as an end result, bump back into the city, and the city people would be displaced as a result of that.

Q. And is it possible that these city people would not be able in turn to go over to the road? A. That would depend on the individual.

Q. All right. A. He could or could not qualify. That would stand on its own.

Q. Now, let's assume for the moment that there are [46] four bargaining units. Let's assume that the shop unit, the garage unit and the clerical unit were also combined. Do you know if more than a handful, or at least a sizeable number of mechanics are qualified to drive? A. Virtually all mechanics are qualified to drive.

Q. What is the basis for that statement, sir? A. Well, probably the most knowledgeable man you got of the equipment itself that is being used is the mechanic. He knows the mechanics of it, and he's called upon to drive it from time to time within the confines of the city.

Q. Does the road driver generally make more money than a mechanic? A. Now, that's been kicked around pretty good as to who makes the most money. You have to again go into who makes the most money per hour. A road driver actually makes eight cents less than the city driver does. The mechanic makes slightly more. So who makes the most money for the most amount of work or the least amount of work. That's a determination made by the individual.

Q. Is it possible that if there were only one unit, mechanics who can drive would bump a driver out of a job. And would you say that it would be more difficult for the driver to replace the mechanic than vice versa? A. I would say it would be much harder for a driver to become a mechanic than it would be for a mechanic to become [47] a driver.

Q. Now, are you familiar with different—I'm talking now about safety. Is winter driving generally more difficult in the city or in the road? A. In the road.

Q. Do you know of or could you anticipate any difficulties based upon winter-driving and the distinction between road and city driving if there were only one seniority unit? A. Well, of course the primary problem would be the road jobs would probably become the least desirable job in ice and snow and hilly country. The road driver, or the senior road driver would probably make an effort to stay in the

city in the cold wintry months and try and come back to the road in the more desirable summer months.

Q. As a practical matter, assuming that a man is bumping from the road to the city, what city driver would he bump? Would he bump the man with high seniority? A. It would depend on his seniority.

Q. Yes. A. Yes.

Q. Well, generally he would have to bump someone with lower seniority? A. Lower seniority than himself. Yes, sir.

Q. Based upon your experience in the industry, can you [48] tell me whether most employees prefer separate seniority units? A. My belief today if the question was submitted to the drivers within the Southern Conference of Teamsters on a total basis as to whether the city-road or road and city wanted a combined seniority roster, it would be rejected by an overwhelming majority of the people. That's my opinion. It's built on knowledge that I have gained over 48 years—since 1948. Not 48 years.

Q. Can you tell me any incidents in your experience where city drivers have protested against having merged seniority systems? A. We have an unusual occurrence now. At Kingsport, Tennessee which is under the Southern Conference of Teamsters, Mason-Dixon has the domicile of in excess of 300 road drivers. Seventy-eight road drivers filed a grievance requesting that their seniority be dovetailed into the city seniority roster. The basis for this was they have had several drivers within the last two or three years disqualified under hearing problems, disqualified under heart problems and high blood pressure problems. It is their feeling that if they were protected by a combined seniority roster and with their many years of seniority they would have been allowed to go and work in the city with Mason-Dixon at Kingsport, Tennessee. There was a protest or a counter-grievance filed by the city employees numbered in excess of a hundred who requested that the [49] road drivers not be dove-tailed into their seniority roster.

Q. What was the result of that grievance? A. The grievance was heard with both sides considered and the decision of the committee was that it was an improper hearing, and the committee had no right to reach a decision. It was a contractual matter.

Q. As a practical matter, is it true that the seniority units were not merged? A. No, they were not merged.

Q. Would a single seniority system result in inefficiencies within the trucking line itself? A. Employers have argued for many years that a combined roster city-road, road-office-shop, any combination would seriously affect their efficiency and their operating ratio. And this union has been convinced that that is true. It has been convinced by the testimony and the arguments that was argued at the bargaining table over the years.

Q. How would this inefficiency manifest itself? A. Example: I'm a road driver. I drove for 13 years. If by some since [sic] of the imagination I would have gotten laid off in Jackson, Mississippi and came to San Antonio as a road driver, and you dispatch me from San Antonio to Dallas, Texas, I would have simply stopped at the first service station, picked me up a road map and found out how to get to Dallas, Texas. I'm a regular road driver. I can follow a road [50] map. But if I came to San Antonio as a city employee, and if you gave me a load of freight and told me to carry it down to the corner of Third and Alamo, it is liable to take me three weeks to get there. It would be like a city driver becoming a cab driver. The knowledge of geographical locations is extremely important to city people.

Q. I want to talk about one more topic, and that is how you would rate the road and city job comparatively. Could you tell me, sir, which one, the road drivers or the city drivers have longer hours? Which one of the two? A. Well, again, you may find a road driver that works 30 hours a week based on his seniority. That's all he can work. But I would say if you were talking about as a whole, that the road driver performs longer hours of service than the average city man.

Q. Is it necessary in order for the road driver to make more money than the city driver for him to work more hours? A. I would say yes. He could also work as many hours and make less.

Q. Who is at home more often, assuming full employment by both the road and the city driver? A. Again, this would vary somewhat, but by a great majority the city man would be home more.

Q. Now, assuming that a city driver works as much as a road driver, would he have—how would his pay stack up? [51] A. Now, this is a big area. The city driver is normally paid five eight-hour days or 40 hours a week. If he works over eight he gets time-and-a-half in a single day. If he works over 40, he gets time-and-a-half. If he works on the 6th day, which could be, if he was a Tuesday through Saturday man, then Sunday would be his sixth day, he would get time-and-a-half for the sixth day. If he worked the 7th day, which would be Monday, he would get double time. Now, assuming that he worked seven days, ten hours a day as a road driver might, and a road driver is allowed by law 70 hours out of an eight-day period, and let's say that he was on a mileage run and run 500 miles per day on each run for a seven-day period, you take the city employee working ten hours a day, pay time-and-a-half after eight, pay him time-and-a-half on the sixth and pay him double time on the seventh day, my opinion and my arithmetic says the city men would make more money.

Q. Would you tell me, based on your experience in the industry whether the person with the low seniority, a low amount of seniority on the road has a more difficult time making a living than a person with a low amount of seniority in the city? A. Again, a city man, once he becomes regular is guaranteed 40 hours a week. He is guaranteed that until such [52] time as he receives a lay-off letter. And the layoff letter can be issued for lack of work. A road driver goes to work tomorrow on the bottom of the board. He is known as a regular employee working off of the extra board, and that means simply one thing. He is called on the

availability of freight and equipment. He may or may not run. If he does not run, he does not get a guarantee.

THE COURT: This has all been covered. It depends on the circumstances of the individual driver, the job, the availability of equipment, the availability of work. We've been through this.

MR. GILLESPIE: I have one more question. I want to confer with my co-counsel for a moment.

Q. (By Mr. Gillespie:) Would you tell me whether the road and city drivers receive the same insurance, the same holiday benefits, the same vacation benefits and the same pension benefits?

THE COURT: That's new. All right.

A. The answer is yes.

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[55] Q. All right, sir. Now, what I'm getting at is simply this: Under the circumstances that I previously gave you, if an individual, assuming that he belongs to a minority group, holds a card in the teamsters union, manages eventually to get a job as a regular city employee, does not the double or the two separate seniority lists make it very difficult and create a hardship on this individual to become a line driver with an opportunity, if he feels that this is what he wants to do, and he feels he has an opportunity to make more money, if he were able to become a line driver? A. My answer to you is a qualified no. It is qualified on this basis: It does not create a hardship for him to go from San Antonio, Texas as a city driver to become a road driver. It does, if he wants to become a road driver, it gives him the opportunity to go. He can go. And he can carry with him the same date for vacations and for fringe benefits. He cannot go to Dallas, Texas and go ahead of people who have been hired and who have existed and worked as casuals and fought their way through the hard times, and now [56] come in and bump ahead of them. This union must

not only represent the employee who is employed here in San Antonio as a city driver, we must represent the road driver as well. And we must recognize the road driver's bidding seniority the same as we recognize the city, the shop or the office.

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[Deposition of Everett E. Cloer]

[4] the witness hereinbefore named, being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINAT.ON

BY MR. HEIDELBERG:

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Q. And you are presently employed by East Texas Motor Freight? A. Yes.

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[5] Q. And what is your present position? A. Vice president in charge of industrial relations.

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[12] Q. And how long did you work for Strickland? A. I left Strickland in —well, I went with [13] ETMF January 1 of 1965.

Q. And what position did you assume at ETMF? A. Director of industrial relations.

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[14] Q. Okay. Well, explain to me if your responsibilities and duties have been changed since 1965 to the present. Would you tell me your designation at the time of each change and also what your responsibilities were changed to. A. Well, really, they haven't changed that much, it's still industrial relations.

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[16] Q. Could you tell me which individual of the company is responsible for hiring road or line drivers? A. Well, Mr. J. D. Louis is responsible for transportation and he—when he needs line drivers, then he makes that known to Mr. White, who is the director of safety, and Mr. White, through his force then employs the road drivers.

Q. Is that Mr. Harold White? [17] A. Yes.

Q. Are you involved in the decision as to whether or not a particular person is going to be hired as a road driver? A. No.

Q. Who makes the final determination? A. Well, that's made between Mr. White and the personnel department.

Q. I assume that you're pretty familiar with Mr. White's method of obtaining road drivers, are you? A. Oh, I'd say fairly, yeah.

Q. Can you tell me how he goes about locating a road driver, let's say if he needs a road driver for a position in, let's say, Pecos, Texas. How would he go about finding one? A. No, I don't know what method he uses when he arrives on the scene, no.

Q. Dealing only with road drivers, can a local terminal manager make a decision by himself to hire a road driver? A. No.

Q. It has to be cleared with Mr. White and Mr. Louis? A. Well, Mr. Louis makes his need known. If he needs additional road drivers, then he solicits the [18] safety department and then it's, of course, as far as—Mr. White checks out the driver as far as his ability and this type of thing and personnel will check out the application and references, so that's the reason they are both involved.

Q. When you say Mr. White checks out the driver's abilities, does he actually get in the truck with him and drive with him? A. Either he or one of his supervisors will, yes.

Q. Are you familiar with the process or procedure of employment of city drivers? A. It's handled in about the same—well, it is handled the same way.

Q. In other words, the terminal manager can't make a final decision regarding the employment of a city driver? A. Well, no. The terminal manager—he can make—hire a man, but then the safety department and the personnel has the final say.

Q. In other words, he has to meet certain employment qualifications maintained by the company, which are determined here in Dallas, is that correct? A. That's correct.

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[20] Q. Are you familiar with the company's no transfer policy? A. Yes.

Q. What does the no transfer policy mean to you? A. Well, it meant that we didn't transfer from one classification to another.

[21] Q. Let's be a little more specific if we can. By one classification to another, are you talking just about between city drivers and road drivers? A. Well, all, yes. All categories, all classifications. Shop people didn't go to the dock, city people didn't go to the shop.

Q. How about supervisory personnel? A. In what respect?

Q. Well, terminal managers, for example. Were they allowed to transfer from one city to another? A. Oh, yes.

Q. Okay. What other positions would be allowed or would not be covered by this no transfer policy? A. Well, we're speaking of contractual people on the no transfer policy.

Q. Okay. You're limiting yourself to just the people that are covered by various collective bargaining agreements? A. Right.

Q. Have you had any discussions with any representatives of East Texas Motor Freight concerning the reason for the no transfer policy? A. Yes. There were several reasons for it. Number one, we felt that the city people were familiar with the city, they were familiar with the customers, [22] they were driver-salesmen. We needed those people in the city to handle our business.

We also felt that transferring city people to road jobs interfered with their family life. They had been accustomed to being home with their families every night; put them on the road, road driving takes them away from their homes. The family gets upset because they are not home at night, it's really a big change in their life.

Q. Who was the person with the company that informed you of this policy? A. The policy was in effect when I went with the company in '65.

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[26] Q. Is the no transfer policy still in effect? A. No, it's—this was amended in January of this year, '72. January 6, to be exact.

Q. Could you tell us what form or what form the policy takes now? A. Yes, it—we posted the notice in the terminals in—oh, let's see. I guess it was February of this year and they were during a 30-day period the employees could bid as to where they wanted to go, transfer from the city to the road or from the road to the city. That was posted in the terminals where we have road drivers domiciled. Only those city drivers at those domiciled points were allowed to make their request known.

And policy states that when vacancies occur at those domiciles, those people in seniority order will be permitted to transfer from the city to the road or from the road to the city; retain their company seniority for fringe benefits. They have a 30-day trial period at which time they can go back to the old position without losing seniority, but if they stay over 30 days, then they lose their old classification seniority and gain new seniority for layoff purposes, bidding purposes as of the first day that they went on [27] the new job.

Q. Why was the policy changed? A. Well, there was, I think, several reasons. Many of the other companies were changing their policy. There were consent decrees being agreed to, put in effect throughout our industry.

Q. What do you mean by consent decrees? A. Between the government and the companies, settling some of the suits, I'm sure you're familiar with.

Q. Well, the record might not be clear, Mr. Cloer. Would you explain exactly to me what type of suits and what was the nature of these different lawsuits brought by the government that caused other companies to change their policies? A. I don't know all the details of the suits. I am familiar that there were suits. I know there were some consent decrees. I am familiar with one consent decree to some extent and that's the one that Strickland Transportation entered into here in Dallas where they agreed to let city people transfer to the road.

We had a lot of employees that, city employees, that thought they wanted to go to the road. All of this was taken into consideration. We felt that we had a moral obligation that could be involved and just [28] thought it was to the best interest of our company to go ahead and amend the policy.

Q. If you are familiar with the nature of the moral problem, could you tell us what it was? A. Well, some of our city drivers, for instance in Dallas, couldn't understand why we wouldn't now go ahead and allow them to go to the road when people down the street like Transcon or some of the other companies were permitting it.

Q. Were there any other reasons for the modification of the no transfer policy? A. I think that generally covered it.

Q. Could you tell me why the modification applied only to those terminals where East Texas Motor Freight domiciled line drivers? A. Well, I think you'd have a real seniority problem if you tried to bring a man in from somewhere out in the field where you didn't have drivers domiciled and put him ahead of some drivers, a city driver you had in Dallas. I can't—we couldn't see any justification for this when you have sufficient drivers in a terminal like Dallas out here to take care of your needs.

See, city people have terminal seniority, you'd be getting into a modified system seniority situation if you did it differently.

[29] Q. Well, you do have a modified seniority for your road drivers, do you not? A. In the road contracts only.

Q. Now, you mentioned that you would have seniority problems if you brought the city drivers in from non-road driver domiciles. Could you explain a little bit more about what would happen if you were to bring somebody, let's say from San Antonio to Dallas. What type of problem would that create based upon the contracts and based upon the company policy? A. Well, there's no—as far as the contract is concerned, there is no provision for this for handling seniority in that instance.

Q. Would it be correct to say that you were unsure as to what seniority classification or designation that individual would have in this situation? In other words, if he was domiciled in San Antonio and for that reason you limited your modification only to those terminals where you had domiciled line drivers? A. As far as I'm concerned it would be no different from taking a city driver out of San Antonio and bringing him in here and putting him in Dallas, as far as the city operation is concerned. And there is certainly no provisions for that or any way to handle their seniority.

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[31] Q. Did you have any negotiations with the Southern Conference of Teamsters concerning the modification? A. Well, I wouldn't say it was negotiations. We showed the Southern Conference the courtesy of reviewing the policy before we put it in effect.

Q. And do you know who was involved as representative for the company in these dealings with the Southern Conference of Teamsters? A. Yes, I was.

Q. You were? A. Yeah.

Q. And who was the representative of the Southern Conference that you dealt with? A. Mr. Murry Miller.

Q. And what is his capacity? A. He was area director of the Southern Conference at the time.

Q. Did you have lengthy discussions with him or were they short in nature? Just describe the types of conversations or communications that passed between you and Mr. Miller concerning the adoption of this modified no transfer policy. A. Well, this was back in October, I believe it's October, '71. He was in Miami, Miami Beach. I flew [32] in there and out in one day. He reviewed—read the three or four page article I had and said he had no objection to it. And that was the extent of it.

Q. Did he raise any questions pertaining to the fact that those city drivers in non-road driver domiciles would not be included in the policy? A. Did he question this?

Q. Yes. A. No, this was not questioned. No.

Q. Did he have any objections to any part of the modification? A. There was none. We did not have the 30-day probationary provision in the company policy and he suggested that the employee be given a 30-day probationary period. And this we agreed to and modified it to that extent.

Q. I believe there is a provision in the modified road contract that allows for a similar 30-day probationary period, is there not? A. You have a 30-day probationary period in all contracts of new employees.

Q. Did you discuss the modified no transfer policy with any representatives of local unions? A. No, they were mailed copies. Each local union was mailed a copy of the policy and the letter of [33] explanation, told when it would go into effect and so forth. That was only mailed to the locals that—where we had road drivers domiciled.

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[34] Q. Prior to the amendment of no transfer policy, the policy did have the effect of locking in all city drivers into city positions, is that correct? A. That's right.

Q. Prior to the modification of the policy, do you know of any city driver working for East Texas Motor Freight

that transferred from a city position to a line driver, road driver position? A. No.

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[37] Q. (By Mr. Heidelberg:) Prior to allowing a person to transfer from the city to a road driver position, does the company attempt to qualify these individuals as road drivers? A. The city people?

Q. Yes, the people that have transferred. A. Yes, we give them the same test that we give any new employee.

Q. New road driver employee? A. Yes.

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[39] Q. Has the company given consideration to discontinuing the modified no transfer policy? A. No.

Q. Do you know the reason for it? A. Yes.

Q. You've outlined certain problems that the company has had by virtue of the modification. Have these problems led the company to reconsider the initial decision to modify the no transfer policy and to reinstitute the previous policy? A. No.

Q. And do you know what the reasons for that have been, if there are any reasons? [40] A. Well, the policy has only been in effect one year.

Q. When the policy was initiated, was there a time frame that was going to be considered for purposes of determining whether or not that the program would be successful? A. No. No, we find it pretty hard, once you put a policy in, give some of the people the benefit of it and then do away with it. We have no intentions of removing the policy at this time.

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[42] Q. As I understand the modified no transfer policy, the city driver maintains his company benefits for fringe benefit purposes—— A. Right.

Q. —but loses his accumulated seniority for job bid and layoff purposes, is that correct? A. That is correct.

Q. Why didn't the company allow a city driver to carry his seniority with him for all purposes when he transferred to a road driver position? A. Then the policy would have been in violation [43] of the agreement.

Q. Did you have any discussions with Mr. Miller or with any other representative of the Southern Conference of Teamsters concerning this aspect of the policy? A. No.

Q. Prior to the adoption of the modified plan, in your own mind would the no transfer policy have the effect of discouraging a city driver to make application for a road driver position? A. Would it discourage him?

Q. Discourage the city driver from applying for a road driver position. A. With our company or some other company?

Q. No, with your company. In other words, he would lose his job bidding and layoff seniority, assuming that he were to become a road driver. A. Well, when we take the application of the employee he puts on there what he wants, if he wants city work or if he wants road work.

Q. You're talking about the initial application for employment? A. He puts this on his application.

Q. Do you know of your own personal knowledge whether the person that takes the application directs the applicant to indicate whether he wants to be a road [44] driver or city driver? A. Yes. We have space provided on the application as to the position he's applying for.

Q. Have you had occasion to review applications, let's say as far back as 1960? A. Have I? Yes.

Q. And your testimony is that there was a location or a place on that application form to designate whether a person wanted to apply for a city driver or a road driver position? A. It's for the position he's applying for. There's a blank showing what position he's applying for.

Q. And it's company policy to have that person notified that he is to put either city driver or road driver? A. No, the guy—the applicant comes in, he knows if he wants to

be a city driver or he knows if he wants to be a road driver. We don't tell him to put on his application if he wants to be a clerk or city driver or—he's coming in looking for a job, he should know what he wants to do.

Q. What happens if a man comes into Dallas, for example, where you have road drivers and city drivers domiciled and put down truck driver, is the person taking the application directed to say "Do you want to [45] be a city truck driver or do you want to be a road truck driver"? A. I'd say generally if a guy put truck driver down, you'd probably consider that as city.

Q. And what would he put down if he wanted to be a road driver? A. Well, he'd put down road driver.

Q. Is that the common term used in the trade? A. I'd say so.

Q. Are you familiar with the procedures that a person—let's say an employee not domiciled here in the city where the corporate headquarters are, what procedure he would have to follow to make application for a position with East Texas Motor Freight other than the position that he presently occupies? A. You mean a city employee in Houston, Texas that wanted to go to work in the city of Dallas, Texas, what procedure do we have?

Q. Okay. That would be one example. A. We would not permit this.

Q. Let me ask you this: If there was a city driver in San Antonio who wanted to drive over the road, is it your testimony that there is no way that he could get to become a road driver with East Texas Motor Freight? [46] A. Under our policy, that's right.

Q. There's no provision for him resigning, for example, his position as a city driver and making an application for a road driver position in Dallas? A. I suppose a man can quit any time, but that wouldn't mean he would necessarily get the job unless he's qualified.

Q. Prior to initiation of the modified plan, do you know of any city drivers that made application for road driver positions? A. No.

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[48] Q. (By Mr. Heidelberg:) Mr. Cloer, you are familiar with the fact that one of the plaintiffs in this case, Jesse Rodriguez, filed an application to transfer to an open road position in August of 1970? A. I understand that is a fact, yes.

Q. And when did you first find this out? A. Oh, I don't know. I couldn't put a date on it.

Q. Has it been in the last year? A. Oh, yes, I'd say in the last year.

Q. It couldn't have been before then? A. It could have been. I am just not that sure of the time.

Q. Do you recall the fact that Modesto Herrera, the other plaintiff in this lawsuit, filed an application to an open road job? A. Yes, I understood there was three involved.

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[49] Q. What are the circumstances surrounding your discussion with Mr. Shafer concerning this? A. He asked me if we would permit these people to transfer.

Q. Did he call you? A. I don't recall whether he called me—well, he mentioned it several times to me. We was generally at the grievance hearings or something like that when it came up, possibly the first time. It's been a long time ago, I don't remember exactly how it come up, but he had mentioned it to me.

Q. By a long time ago, you mean in 1970, sometime? A. I'm just not sure of the time, I don't know.

Q. Well, do you remember specifically any occasion in which you spoke to Mr. Shafer concerning the application of these individuals, the plaintiffs in this lawsuit, for over-the-road transportation with ETMF? A. Spoke to him, but I can't put a date on it.

Q. Okay. How many time, if you can make an approximation? A. Oh, I'd say at least half a dozen times.

[50] Q. And what did Mr. Shafer say to you on those occasions? A. He asked me if we couldn't transfer, to give them over-the-road jobs, fill one of the vacancies with them.

Q. Was he mentioning any vacancy in any particular terminal? A. Well, no, he was talking about terminals where we had road drivers.

Q. Okay. What else did Mr. Shafer say to you concerning the transfer of these individuals? A. I can't—I don't recall just what the conversations were other than at the time that he was talking to me about it. Of course, I was not in charge of transportation, but at that time I was familiar with the fact that we had, oh, some 75 to 100 road drivers on layoff when we first started talking about it.

Q. Okay. What response did you get from Mr. Shafer concerning these requests for transfer? A. Well, I advised him that we had people on layoff, that we couldn't even consider.

Q. What else did you advise him of, if you can recall? A. Oh, one—well, at one time I recall we—I believe we were talking about Dallas and Pacific [51] and I told Mr. Shafer that I didn't see any way that we could transfer people in from San Antonio ahead of the Dallas people, because we had Dallas people that had also expressed a desire to go on the road.

Q. As best you can recall, those are the only reasons that you gave Mr. Shafer or the only explanation you gave Mr. Shafer concerning the application of these three plaintiffs for road driver positions? A. The only explanation I have him?

Q. As to why the company would not consider their applications for road driver positions. A. Well, I don't—as I say, I'm not sure of the timing on this, I don't know whether we had talked about the fact that it was against company policy at that time or—I just don't recall what the timing was on it.

Q. Well, can you remember whether or not you told him it was against company policy to allow these individuals to transfer to road driver positions? A. I don't specifically remember telling him that, but it would have been.

Q. Your testimony is you can't remember whether you did or did not tell him that? A. No, I don't remember. Like I say, we talked about it several times and it's been a long time ago, I don't recall, you know, the exact conversation.

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[54] Q. Prior to the initiation of the modified no transfer policy, did you know of any Negroes that were driving as road drivers for East Texas Motor Freight? A. I believe we had some driving out of Granite City, Illinois.

Q. How many were there, do you know? A. No, I'm not sure, two or three.

Q. Do you recall the names? A. No.

Q. Are they still working for the company? A. I believe so.

Q. You don't recall when they were employed? A. No.

Q. Do you know of any black or Negro road drivers that have worked in the State of Texas in that area covered by the Southern Conference collective bargaining agreement? A. No, there was not.

Q. Do you know of any Mexican-American road drivers that have worked in the State of Texas in that area covered by the Southern Conference collective bargaining agreement? A. Not by name. We have some, but I don't know them by name.

Q. Do you know where they are domiciled? [55] A. Some in El Paso, I believe, and I'm not sure about the other locations.

Q. Let me ask you this: Is El Paso included within the Southern Conference collective bargaining agreement? A. A portion of it.

Q. Which portion? A. Road drivers that operate east of El Paso are in the Southern Conference.

Q. And those drivers that operate west are in the Western Conference? A. Right.

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authorized and acting Notory Public in the State of Texas.

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SADRACH GARCIA PEREZ, the witness, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. PENSHORN:

Q. Mr. Perez, will you state your full name for the record, please sir. A. Sadrach Garcia Perez.

Q. Where do you live? A. 7966 Niagra.

Q. In San Antonio, Texas? A. Yes.

Q. How long have you lived in San Antonio? A. Thirty years.

Q. Were you born in San Antonio? A. No. I was born Sanderson, Texas.

Q. When did you come to San Antonio? A. I was five years old, around 1942. Something like that.

Q. And you have lived here continuously since that time? A. Yes.

Q. Can you speak just a little bit louder, Mr. Perez? I am having trouble hearing you? A. I will try. I am having trouble with my throat. I have [4] been sick for three days.

Q. Incidentially, if there are any of my questions you don't understand, feel free to ask me to clear them up before you answer them so we are certain we have your answer. Okay? A. Okay.

Q. I believe that you became a regular employee of East Texas Motor Freight in November of 1959. Is this correct? A. November, 1959, yes.

Q. Prior to going to work for East Texas, for whom did you work? A. I was working with a roofing company, I believe. Construction company.

Q. Do you remember the name of it? A. Craig Bros., or something like that.

Q. Crea? And what type of work did you do for this company? A. It was construction work, and I handled many different types of jobs. Mostly assisting the different workers and more towards the carpenter's helper. And I was a delivery. I made their deliveries, and I would also bring the material within the job site.

Q. All right. Is it correct that you became a member of Teamster Local 657 in January of '59? A. I am not sure if it was January. A close as I can [5] remember. When that question was asked of me, it was around that time, because I started working in '58 with East Texas Motor Freight as a casual. I remember that it was something like maybe forty days or forty-five days before I actually joined the union.

Q. I see. Then after you joined the union, and prior to the time you became a regular employee of East Texas, you worked for several months as a casual? A. Yes.

Q. During this period of time between the time you joined the union and the time you became a regular for East Texas, for whom did you drive as a casual driver? What freight lines? A. East Texas Motor Freight.

Q. Only? A. Yes.

Q. In your answer to the local union's questions, which were submitted to you in this case, I believe you stated that you had made an application for a road driver's job to representatives of East Texas about thirty-five times. Is this correct? A. I was just estimating. It might be more than that, since I was there quite a while, and I would bring up everytime I had a chance.

Q. I see. Now, during the entire period of time that you [6] worked for East Texas, did they ever have road drivers stationed in San Antonio, where you were employed? A. Not that I know of.

Q. Why did you make an application so many different times, Mr. Perez, to representatives of East Texas? A. So I could get the job.

Q. Did they indicate to you in any of your converations with them that you should apply later on? A. What do you mean "later on"?

Q. Well, at the time you were talking to them in any given instance when you asked for a road driver's job, did they indicate to you that you should check back with them later on about such a job? A. During the first times that I asked, way back when I was starting, no. Later on, more recently, before the time that I was fired, yes.

Q. Well, what terminal were you seeking to get a road driver's job at? A. I was willing to go anywhere. I am speaking about when I started working. I was willing to go anywhere where I could get a job. The reason for this was because I was not working too much, and I believed I qualified as a road driver.

Q. Even after you became regular, you were not working too much. [11] A. 1950.

Q. Mr. Perez, in any of these approximately thirty-five times that you have talked to representatives of East Texas about a road driver's job, did you ever make any complaint to the effect that Mexican-Americans and Negroes were being denied such jobs because of their race or national origin? A. As close as I can remember, yes. I stated to Mr. Truitt this.

Q. Now, who was Mr. Dick Truitt? What was his job with East Texas. A. He was Terminal Agent, whatever that meant at that time. That is all I knew about.

Q. And when was this that you told him that? A. This was a little prior to becoming even a regular at East Texas Motor Freight. I was a casual.

Q. Prior to becoming a regular the first time? A. Yes.

Q. This would be sometime in the latter part of 1959? Is that correct? A. Yes.

Q. And at that time you told Mr. Dick Truitt what about discrimination? A. Why I could not get a road job, and when he answered me, he told me things like these jobs like these were not for us. What [12] he meant by "us" I don't know. But he was talking to me and I am a Mexican American.

Q. All right. What else did he say besides "these jobs are not for us?" A. It might not have been at that exact time, but—

Q. Now on that occasion? A. On that occasion I do not remember the exact answer to that.

Q. Well, as well as you can recall, exactly, what did he say to you on that occasion? A. I remember his answer to one of my inquiries around that time. It is possible that that is the time. He said that the equipment was too expensive for us to be driving.

Q. What else did he tell you on that occasion? A. On that occasion, he said general things like, "we try. We treat you people nice here." And all that kind of stuff, but exactly what he said, I do not remember.

Q. At that time were there any road drivers stationed in San Antonio working for East Texas? A. Not that I can remember.

Q. Did you make it clear to him that you were asking for a road driver's job at another terminal? A. Very clear.

Q. All right. Now, was there any other occasion which a [13] supervisor of East Texas indicated to you when you spoke about a road driver's job, that they were not for Mexican Americans or Negroes? A. They would not come as far as I am concerned, say that these jobs are not for Mexican Americans or Negroes. But they would generalize that these jobs were not for us. But "us" were the city drivers that were there and mostly Mexican American.

Q. Now, on any of these occasions, when you asked representatives of East Texas about road driver jobs, did you go to any representative of the local union and report to

them what they had told you? A. Well, it depends on what you mean by "report".

Q. Tell them about it? A. Tell them, yes.

Q. All right, when was the first occasion? A. One of the first occasions was when I was wanting to join the union. Mr. Ray Shafer said he could not allow me to join the union because there was not sufficient work for me. At that time I told him that I was already working with East Texas Motor Freight. He did not want to take my money. We discussed the matter. In this discussion, it was brought out that why couldn't I drive the truck for East Texas Motor Freight also on the road. There was a—it was a discussion. It was [14] not like a written complaint or a grievance, or anything like that. I doubt if at that time I knew of the grievance procedure. I was just about to join the union. I was just informing myself as to how I could work with East Texas Motor Freight.

Q. Now, this was before you even became a member of the union? A. Before I even became a member of the union.

Q. And what did Mr. Shafer tell you on that occasion? A. Simply that he didn't want to take my money and that there was no work.

Q. Well, did you interpret that to mean that he wouldn't let you in because of your—you were a Mexican American? A. I do not know what—I mean I didn't make an interpretation of the reason at that time. I was answering the fact that I had discussed my job at East Texas Motor Freight.

Q. All right. Do you make an interpretation of the reason now as to why he wouldn't let you in then? A. No.

Q. All right. Now, exactly what did he say to you about getting a real driver's job at East Texas on that occasion? A. Nothing. He didn't answer. All he said there wasn't [15] enough work, period. He didn't specify road, or he didn't specify city, or anything.

Q. But you did tell him on that occasion, before you were a member of the union, that you wanted a road driver's job with East Texas? Is that correct? A. I inquired at that time the reason why we could not drive at East Texas Motor Freight.

Q. As a road driver? A. As a truck driver. Whichever, both. He was talking about the fact that they had no city jobs but they had road jobs.

Q. In San Antonio? A. Not in San Antonio. Coming into San Antonio, I believe, from Longview at that time. I was not informed where the point was. The reason for the company doing this was the fact that the trailers were there. The freight was there and there was no work for us. So the reasons that they would give us was the fact they had no road drivers to bring the trailers from their point of origin, or whatever. At that time I did not know it was Longview. So I offered myself to the company to go and get the trucks.

Q. You say the trailers were there and the freight was there. Where are you referring to? What location? A. At this time, I believe it was Longview, Texas.

[16] Q. How did you know there were trailers and freight there? A. We had occasions to talk with many of the road drivers who came in and also the company themselves would come out and say it. In other words, I believe they were giving us excuses as to why they would not hire us, even in the city.

Q. In other words, is this correct, Mr. Perez, that you are of the opinion that in 1958 and early 1959, they had sufficient trailers and freight located at Longview, Texas to where they could have given you a job as a road driver, is that what you are saying? A. This is what they were saying.

Q. Is that what you are telling us today? A. I am telling you that this is what they told us.

Q. Who told you that? A. The different dispatchers—the agents.

Q. Told you personally? A. Yes.

Q. Who told you that, personally? A. At that time it was Mr. Charlie Lewis and Mr. Dick Truitt.

Q. Told you what about the Longview trailer and freight situation? A. That they had the freight to come into San Antonio, but they did not have the drivers to bring them in.

[17] Q. All right. What else did they tell you about that? A. Not too much more. They wouldn't talk much. They would just give us, I thought at that time, just excuses, not to hire us, even in the city.

Q. Now, on what other occasions did you speak to any representative of Local 657 about your conversation with forman, or managers of East Texas about road jobs. A. On many occasions that I did not answer there, because I do not remember the exact dates, and this is what you were asking for. The ones that I did remember is the one in 1966, and the one in 1969, and then later on it was sometime in 1970, the latter part of 1970, into 1971, until the day I was fired.

Q. All right, Mr. Perez. Let's start with the date that you first drove a truck or were employed by East Texas Motor Freight. This would be back in November of 1958 or somewhere in the latter part of 1958, would it not? A. Uh huh.

Q. All right. Now, you have already told us about the first occasion that you went to a union representative about racial discrimination. Now, I want you to tell me the next time following that that you went to a union representative about racial discrimination? A. Like I said, I do not remember the dates or time, but I would discuss this with Shafer very, very often.

[18] Q. All right. I want you to tell me about the next time that you remember that you went to him and talked to him about it. A. The next time I remember is the one I stated in 1966.

Q. All right. So you cannot remember any conversation with any representative of Local 657 regarding racial discrimination between the latter part of 1958 and 1966? Is that your testimony? A. No, sir. I can not remember the dates. I remember many many occasions in between that time when I discussed it with Mr. Ray Shafer.

Q. All right. I want you to tell me about each occasion. That is what I am trying to find out and what you said and what he said. A. Like I say, I do not remember. I would just generally bring it out and ask him how come we couldn't get on the road.

Q. All right. Will you answer my questions, Mr. Perez, please? Starting with the first time that you drove or worked for East Texas Motor Freight, I want you to tell me about the first occasion that you can remember that you went to a representative of the local union and complained about racial discrimination? A. The ones that I can remember are the ones I have related, because the dates and all of that, and I remember the [19] answers I got and all that. The others in between, I cannot remember the dates. I was very close. I would meet union representatives sometimes on a weekly basis, and sometimes more often, and every time we discussed East Texas Motor Freight, or our job, or anything like this, I would bring it up and I would discuss it.

Q. Bring what up? A. The fact that how come we could not drive on the road. The fact that how come we were laid off when there was freight to be delivered. General complaints. All of the time complaining.

Q. All right. I am only asking you now about complaints that you made to the local concerning racial discrimination, Mr. Perez, nothing more. And I am not asking you for the specific dates. I am only asking you to tell me about the instances that you remember, starting with the very first one. A. All I can remember is that there were several times.

Q. All right. Tell me about the first time and who you talked to. A. All of the time I would talk to Ray Shafer.

Q. You never spoke to anyone but Ray Shafer about racial discrimination at East Texas? Is that correct? A. I am speaking about between the time I first started up until the time I noted on your question there, 1966. [20] During that time I discussed it only with Ray Shafer, yes.

Q. All right. Who else have you discussed it with besides Ray Shafer. A. Sometimes with Ezzell and sometimes with Bill Selby.

Q. Who else? A. Ray Culla, and the union officers.

Q. Which union officers? A. Andy Garza, Manual Perez.

Q. Who else? A. Senovio Chavez, Bob Dominguez, Jesse Martinez, and there might be others.

Q. Now, you have discussed with all of these individuals racial discrimination by East Texas Motor Freight? A. In reference to the road, yes.

Q. My question is, have you told all of these individuals that East Texas Motor Freight was discriminating against Mexican Americans and Negroes as a result of the road driver jobs? A. As far as I can remember, when I discussed something like this, I would discuss it for my own personal experience, or for what was happening to me. I would not discuss it as far as anything else.

Q. My question to you is, did you tell all of these individuals, whom you have named, that East Texas Motor Freight [21] discriminated against Mexican Americans and Negroes as a result of the road driver jobs? A. I do not understand what you want me to say.

MR. PENSHORN: Would you read the question back?

COURT REPORTER: "Q. My question to you is, did you tell all of these individuals, whom you have named, that East Texas Motor Freight discriminated against Mexican Americans and Negroes as a result of the road driver jobs?" A. I still don't understand it. I thought you said you would rephrase it if I didn't understand.

Q. You want me to ask the question again? Is that what you want?

MR. HEIDELBERG: Counsel, he has indicated he doesn't understand the question. Rephrase it or clarify it.

Q. All right. My question to you is this: Did you tell all of the people that you have named that East Texas Motor Freight was discriminating against Mexican Americans and Negroes in the giving and hiring of road drivers? A. I thought I already answered that. I would not generalize as to Mexican Americans or Negroes. What I would discuss something, I would talk about my own particular case, [22] I would not be telling any of these individuals. I would be discussing or inquiring as to why East Texas had this—did this.

Q. Did you tell any of these individuals that the reason you couldn't get a road driver's job, was because you were a Mexican American? A. I am sure that I mentioned it, yes.

Q. Which one did you tell it to? A. I cannot remember exactly, but I am sure it would be somebody like Jesse Martinez, and of course, Ray Shaffer.

Q. Anyone else that you told it to? A. Maybe not as such, because of the reason that I was a Mexican American, but you can't hide the fact that I am a Mexican American, and they discriminated against me.

Q. Now, when did you tell Ray Shafer the first time that you couldn't get a road driver's job because you were a Mexican American? A. I do not remember. The closest would be the date I gave you.

Q. What is that? A. Sometime in 1966.

Q. You do not, at this time, remember having said anything to Shafer prior to 1966 about racial discrimination? A. Well, as far as I can remember, or as close as I can [23] remember, I cannot come out and say that exactly, because of the fact of what the union did. It just wouldn't make sense. I was with Ray Shafer and he was union and he was supposed to be representing me over there, and to bring out

something like this bluntly, "they are discriminating against me because I am a Mexican American" I would bring up the charges—I would bring up the complaint. That I spelled it out "Mexican American" may be I didn't. But the complaint was there.

Q. All right. Now, let me ask you this, Mr. Perez: At this time, right now, do you remember a single occasion when you complained to Ray Shafer about racial discrimination at East Texas Motor Freight? A. Any time from when I first joined the union to this day?

Q. Right. A. There are some times when I had, some times when I did it indirectly, because I was afraid of what he might turn around and do, which he eventually did.

Q. All right. Let me ask the question again: Do you remember this morning a single time when you complained to Ray Shafer about racial discrimination at East Texas? A. I remember several times. I do not remember the dates.

Q. All right. Tell me about the first time that you remember.

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[26] Q. All right. It is your testimony this morning then, that you have never made a specific complaint

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[27] to Shafer about discrimination against Mexican Americans and Negroes? A. Under the terms that you say, no.

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[29] when you specifically complained to Ezzell about racial discrimination at East Texas? A. It would be hard for me to remember, like I say, when exactly, and all of this. He would go to the terminal dock, or we would go to the union Hall, and we would bring all of these kind of complaints out. No [sic] specifically pointing a finger and saying "You are discriminating against Mexican Americans and Blacks", but we would bring to light the problems we were having there at East Texas. Many many times.

Q. Well, I would like to ask you to confine your answers to racial discrimination regarding road driver jobs at East Texas. Now, have you ever, at any time, made a complaint to Ezzell that East Texas was discriminating against Mexican Americans and Negroes, in hiring road drivers? A. You keep using "Mexican Americans and Negroes." It is very hard for me to answer.

Q. Do you remember ever having made such a complaint to Mr. Ezzell? A. I have complained that I was being discriminated against.

Q. Because you were a Mexican American? A. Because I was a Mexican American, yes.

Q. To Ezzell? [30] To Ezzell.

Q. When? A. Like I said, on numerous occasions, when he was coming out representing the union.

Q. Regarding a road driver's job, or any other? A. Regarding any other complaint we might have, or we might bring up.

Q. Let me ask you again, Mr. Perez: Have you ever made a complaint to H. E. Ezzell in which you specifically told him that East Texas Motor Freight was discriminating against Mexican Americans and Negroes in the hiring of road drivers? A. I don't know. Can I talk to you?

(Whereupon there was a discussion off the record)

Q. Did you ever go to H. E. Ezzell and complain to him that you weren't being allowed to go on the road as a road driver because you were a Mexican American. A. Yes.

Q. When? A. On several occasions when he would go over there to represent the local union.

Q. What did you tell him, exactly? A. Exactly, I do not remember. But generally it would be questions like, "How come we can't get on the road?".

[31] Q. Did you end those conversations and tell him it was because—you couldn't, because you were a Mexican American? A. Sometimes, I am sure I did, and other times, I am sure I didn't.

Q. Do you remember a single instance in which you told him that that was the reason? A. No with dates, or anything like this, but one time when he even answered what would happen if I continued to do things of this nature.

Q. Did you at one time tell him you couldn't get a road driver's job because you were a Mexican American? A. Yes.

Q. Approximately when was this? A. Approximately a little bit before the time when I got fired, in 1966.

Q. Did you ever tell him this on any other occasion? A. The exact words, no. The general statement, yes.

Q. You never did tell him on any other occasion that it was because you were a Mexican American that you couldn't go on the road? A. That kind of statement exactly, no.

Q. All right. Other than what you have told us that you told Ray Shafer and H. E. Ezzell, and the letter you wrote to Mr. Fitzsimmons, is there any other time when [32] you specifically complained to a union officer or representative that you couldn't get a road job because you were a Mexican American? A. There might have been, but I don't remember.

Q. You can't remember any this morning? Is that right? Mr. Perez, in the written questions which the local union submitted to you to answer in this case, you were asked to state each occasion and who was present when you made an inquiry about getting a road driver's job on occasions when you brought this up with the local union. Do you remember that question? A. Were you reading it, or were you just telling me about it?

Q. I am just telling you about it. A. I guess I remember it. It happened.

Q. Do you remember saying that you brought up the matter of road driver's jobs with East Texas at every local 657 meeting between April of '69 and May of '71? A. Do I remember that?

Q. Yes. A. I did not say that I brought it up at the meetings, and I did not bring it up at the meetings except once.

Q. Now, what meeting are you referring to? A. At the time when we had the regular meetings, I would discuss it with Ray Shafer.

[33] Q. You did not answer in your answers to the Union's question that you brought this matter up at every regular Local 657 meeting between April of '69 and May of '71? A. I do not know whether this was—you are saying what I am saying is that when I brought it up, I brought it up to Ray Shafer. On the dates you are asking, were the dates of the regular meetings. Because we would have either a board meeting or I would be present as an officer at the regular meetings, and I would discuss this with Ray Shafer.

Q. Well, then, is it your testimony this morning that you never made an inquiry about a road driver's job at a general membership meeting of the local union? A. Yes, I did.

Q. When? A. I do not remember the exact date, but one of these times at the regular meeting.

Q. One time you did it? A. That I remember, I inquired at a General meeting one time.

Q. All right. A. At a company meeting another time.

Q. All right. Now, at the general union membership meeting, approximately when did you bring this up? [34] A. I remember that I was sitting next to Shafer and questions were being raised about it, and then I, as an officer, asked him about it. This was in a meeting, I don't know, around—let's see. Possibly the April membership meeting.

Q. April of what year? A. 1970.

Q. All right. Is that the only general membership meeting that you can recall this morning where you brought up the matter of employees gettting road jobs at East Texas? A. You mean general membership meeting? Yes.

Q. All right. What other type of meetings did you bring this matter up at? A. There were times when Job Stewards wanted special meetings with their companies,

and at one particular East Texas Motor Freight meeting, after the regular membership meeting, this question was brought up and I had questions about it. I inquired about it.

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[43] Q. All right. Now, in your answers to the union's written [44] questions to you, you stated that in April of 1971, you went to Mr. Shafer and talked to him about a road driver's job and at that time mentioned some openings in jobs at San Antonio. Do you recall that conversation? A. Yes, I do.

Q. All right. Will you tell me first of all where that conversation took place? A. In his office.

Q. Who was present besides you and Mr. Shafer? A. In his office, no one. Right next to the office, Secretary Elizabeth Ezzell.

Q. What did you say to Mr. Shafer on that occasion about a road driver's job? A. I told him that Mr. Wes Sager had told me that there three road job openings in San Angelo, Texas, and I was asking him permission to transfer over there to San Angelo and get one of the road driver positions.

Q. You were asking Shafer's permission to transfer? A. I was asking, inquiring of him, how I could go about it, and at the same time asking him could I transfer over to San Angelo.

Q. All right. What else did you say to him? A. That was about it.

Q. All right. What did he say to you? A. He asked me who told me, and I said "Wes Sager". He [45] asked who told him, and I said, "I don't know. He told me." And he didn't say much more. He just picked up the phone and called somebody.

Q. Is that all you recall that he told you on that occasion? A. Prior to the phone call, yes.

Q. Who did he call? A. I heard him looking for Everett Cloor. Whether he talked to him, or not, I don't know.

Q. Well, did he make a call about the road drivers job for you? A. Not for me. Against me.

Q. Well, who did he call? A. He asked for Everett Cloor.

Q. Who is Everett Cloor A. As far as I know, he is a company representative.

Q. Do you know where his office is? A. In Dallas.

Q. What did you hear Shafer say over the phone on that occasion? A. That what was wrong with Wes Sager telling his man that there were road openings in San Angelo.

Q. What else did you hear him say to Everett Cloor? A. He told him after listening, I don't know what the other party said, he told him to be sure and tell Wes Sager to quit telling us this type of information.

[46] Q. What else did he say A. To forget about it, and that was it.

Q. All right. Now, on what basis or what information or what reason do you say he made a call against you? A. The reason is that Mr Wes Sager explained how this came about, how this job opening came about, and the fact that he told whoever he was talking to on the phone to tell Wes Sager to quit giving us this type of information, which I believe was good for myself, if I wanted a road job.

Q. Well, at that time did you make an application at East Texas for one of those jobs at San Angelo? A. I already had an application pending, I believe, to be a line driver. For those specific three, I was only at that time inquiring, trying to find out how I could get one of those three positions.

Q. Well, you didn't need Shafer's permission to transfer to San Angelo, did you? A. It was within his jurisdiction, yes, I believe. I am not sure, but I believe.

Q. Well, are you saying that you had to have his permission to transfer to a job at another—in another town? A. I believe so, at that time.

Q. On what do you base that option, Mr. Perez? [47] A. Well, just that whenever you are going to transfer or do anything within the union, you have got to have union permission, or something like that. That is as close as I can remember.

Q. Where did you learn that? A. Reading some magazines where you transfer from one local to another, and things of this nature.

Q. I see. And did you hear anything else that Shafer said on that occasion to Everett Cloor? A. No. He was angry and he was more or less getting after Everett to get after Wes Sager, or something like this.

Q. Did you verify in any way that there were some line driver job openings in San Angelo? A. Just the fact that I talked to the road drivers that came from San Angelo or Balmorhea, which is close by, and they told us of these positions.

Q. Men working for East Texas? A. Yes. It was the old VCS acquired East Texas lines.

Q. Now, Mr. Perez, in your complaint in this lawsuit, you complain, among other things, that East Texas keeps Mexican Americans and Black city drivers from becoming road drivers. Isn't that part of your complaint?

. . . . . .

[51] Q. Why do you feel they could have done something about it? What is your basis for that? A. If you are representing myself, and there is a position where I can better myself, I believe that if you represent me and you get me that position, if you do not get me that position, you are not representing me.

Q. Well, if East Texas Motor Freight has a policy of not hiring Mexican Americans for road driver jobs, how would local 657 have forced them to do this? A. Possibly the same way you get $5.00 and some odd cents an hour. I do not know. That is up to you to do it.

Q. Is there anything specific that you feel your local union should have done about getting you, personally, a

road driver's job and didn't do it? A. Personally, no. I believe that the doors should have been opened for road driver positions, if the member so desired.

Q. Well, have you not asked Mr. Shafer on two or three occasions to help you get a road driver's job? A. Yes. But I wasn't saying, like the way I understood your question to begin like that—I was only asking for myself. I was just asking because I was me. It was me asking. So naturally, I would be talking about myself. But the way that I talked, I mean anybody could go on the road or become a road driver.

[52] Q. Well, you asked for help for yourself in getting a road driver's job, didn't you? A. Sometimes. And other times I asked for other members of the company.

Q. Confining your attention now to just yourself, did you not expect the union to try to help you get a job? A. Did I expect it?

Q. Yes. A. I always expect the union to go try and do something.

Q. Do you know they didn't try? A. Yes.

Q. How do you know this? A. Because I never did get the road job and I would always be told differently.

Q. All right. Assume they tried and were turned down; then what should it have done? A. Why didn't they tell me about it?

Q. All right. But what should they have done about making East Texas give you the job? A. That, I cannot answer. I believe they could have done better.

Q. You feel they could have done it, if they wanted to? Is this correct? A. Yes.

Q. What is your basis for this opinion? [53] A. To begin with, I do not believe there should have been these barriers spelled out and all of that in the contracts. And once they are there, I believe that the union representing its members, should have done something about it a long time ago.

Q. That is not in response to my question, Mr. Perez? A. Well, you asked what I believed.

Q. My question to you was, what is the basis for your opinion that the local union could have made East Texas give you a road driver's job, if the union had wanted to do so? A. I don't know. I can't answer. I don't understand you.

Q. All right. Let me ask it this way; Do you not believe that if the local union could have and wanted to, it could have gotten you a road driver job with East Texas? A. Not me. You see. That is what I don't understand. You are asking exactly of me. If the policy was not there or if the contracts were not made in that way, I believe that I could have progressed within the same company. I could have advanced to be a road driver in a better paying position. By the union making this contract, and all of that, and accepting them, and agreeing to them, that is excluding me.

Q. Well, is your only complaint then, about the union, that it failed to make the right type of contract? [54] A. They failed to represent. I don't know whether the contract could have made it or not.

Q. In what way did the union fail to represent you in getting a road driver's job? A. Well, that it would not go and speak in my behalf. Either as a class or as an individual, or however the union wanted to do it.

Q. All right. Confining it to you, personally, as an individual, how has the union failed to help you get a road driver's job? A. I already stated that by the contracts they made and all of this. They agreed to it.

Q. And in what other way? A. There are many ways, and ideas in my mind, that it could have been done.

Q. Well, tell me about it. That is what I want to know? A. Well, just the fact that I am in the city and I want to transfer to the road, there shouldn't have been a transfer, or rather a no transfer thing. I mean there should have been, from the beginning—there should have been a truck driver's job.

Q. All right. Now, the union failed to represent you in getting a road driver's job. Is that not your contention in this suit? A. Getting a road driver's job. Allowing me to get a road [55] driver's job, yes.

Q. All right. In what way now, specifically, has the union failed to represent you in making it possible for you to get a road driver's job? A. Just like I already said, by the contracts. Entering into the contract that keep me in the city positions.

Q. All right. In any other way has it failed to represent you? A. By the local union representative not speaking in my behalf.

Q. With regard to a road driver's job? A. With regard to the possibility of obtaining a road driver's job, yes.

Q. All right. Do you know he did not speak in your behalf? A. Like I stated before, yes, I know he didn't. Otherwise, I would have got it.

Q. What is your reason for saying that? A. Because he said so himself.

Q. That he didn't talk to them about it? A. He just promised and never came back with an answer or anything like that.

Q. My question, Mr. Perez, to you is, how do you know that the union representatives did not talk to East Texas about your getting a road driver's job? A. How do I know?

[56] Q. Yes. A. I just know they didn't.

Q. How do you know that? What is your basis for saying that? A. Well, the contracts are still the same.

Q. I am speaking of the union's failure to talk to East Texas about you, personally, and about you, personally, getting a road driver's job, regardless of the contract? A. I keep telling you this is not for me, personally. I believe that if these barriers had not been there, I would have been a road driver years ago.

(Whereupon there was a discussion off the record)

Q. Now, Mr. Perez, one of your complaints in this lawsuit is that East Texas had a policy of not allowing city drivers to transfer to line driver jobs, without the loss of their company seniority for job bidding and layoff rights. Isn't that part of your complaint? A. It is part of the thing that was explained to me, yes.

Q. Well, you are complaining of that, are you not? A. Yes.

Q. And you do understand or believe that they have such a policy as that, do you not? A. Yes.

Q. Now, you also complained in this suit, did you not, that Local 657 had accepted this policy. Is that not [57] part of your complaint? A. Yes, it is.

Q. All right. Now, tell me briefly how local 657 has accepted this policy that you are complaining of? A. By the fact of the contracts, the way they make their contract.

Q. In any other way, has it accepted the policy? A. There might be others. I don't remember them.

Q. All right. Have you, personally, ever complained to any representative of the local about this specific policy? A. Yes.

Q. All right. To whom did you complain? A. Ray Shafer.

Q. Do you remember when? A. Many occasions, but one of the occasions would be when I inquired about the road driver position. He told me that we were bound by the city contracts—city pickup and delivery contract.

Q. All right. Now, in your answers to the questions that the union asked you, you stated that Ray Shafer and I, personally, were responsible for the union accepting this no transfer policy, did you not? A. I believe so.

Q. All right. Now, is it your contention in this suit that [58] Ray Shafer and I, as the union attorney, could have changed this policy of East Texas, which refused to let city drivers transfer to road jobs with their city seniority? Is that your complaint in this suit? A. My reason for that is because you were part of the union. Ray Shafer is a representative, and you, as an attorney, and that you could or could have not, I do not know, but I believe that you could.

Q. All right. Well, I want to understand what your complaint is, Mr. Perez. I am not trying to trick you in any way. I just want to know if you are complaining in this suit that it was the action of Ray Shafer and myself, as union lawyer, that accepted this policy of East Texas that you are complaining about? A. I would say that you are part of the complaint.

Q. In other words, you feel that Ray Shafer and I, as the union lawyer, acting on behalf of the union, accepted and agreed to this policy? A. Yes.

Q. Is that right? A. Yes.

Q. All right. Now, confining your attention first to Shafer, why do you say that Shafer accepted this policy of East Texas, which you are complaining about? A. The same reason as the contracts. He was abiding by [59] them or enforcing them, whichever.

Q. All right. Any other reasons? A. Just when he would make a statement that the company policy, you know, kept you from doing that. He was accepting it.

Q. All right. Any other reasons? A. Not that I can think of, no.

Q. Now, why do you say that I, as the union lawyer, was responsible for the union accepting this policy? A. For the same reasons. You were the union representative.

Q. And what other reasons do you have? A. That I know of, that would be all.

Q. All right. Now, what do you think that Ray Shafer should have done about changing this policy that you didn't like, which prohibited city drivers from transferring with their company seniority? A. I believe he could have made it known to the Committee which at times, I believe, he was a member, of the way that, you know, we felt toward it. And possibly in that way.

Q. And what other things do you think he should have done? A. In reference to that, I guess that's—it goes toward changing the contract—toward changing the situation.

Q. He should have done something about changing the situation of the contract? Is that right? [60] A. Yes.

Q. Now, what do you feel that I, as the union lawyer, should have done to correct this policy that you are complaining of? A. The same thing, I believe. Work with him. Help him in achieving this.

Q. Specifically what do you think I should have done? A. I do not know. Just help him do it.

Q. Help him get the contracts changed so that they couldn't enforce this policy? Is that what you are saying? A. Yes. Work with him towards eliminating the problem. As to how, I don't know.

Q. Well, what is the problem now? The fact that you couldn't transfer? A. The no transfer policy, yes.

Q. All right. Now, have you told me all the reasons that you have as to why you believe that Shafer and I, as union lawyer, were responsible for the union accepting this no transfer policy? Take your time and think if you have told me all of them? A. I don't think so. I think there were others. I could take time and still wouldn't remember, but there were still times that I believe where he could have represented us in a better way than what he was doing.

Q. With regard to the no transfer policy? [61] A. With regard to the no transfer policy.

Q. What do you recall about that? A. Statements that he made that it was company policy and he could do nothing about it.

Q. Well, my question to you, though, is what should he have done about it? A. I don't know. Worked toward changing it.

Q. Is that all? He should have changed it? Is that all you say he should have done? A. I don't know whether he could change it, himself, or not, but he could work towards changing it and eliminating it and bringing it up with the company, speaking in my behalf, and going to the company and representing me, saying, "Sadrach wants to be able

to transfer to the road," and getting answers from the company as to why not. Things of this nature.

Q. Is there anything else you feel he should have done to change this policy? A. Well, I feel that there are many things, but I cannot just remember, you know, or say. I don't know how he would go about it. I just mean that he could have done something about it.

Q. He could have and should have done something about changing the policy? A. I believe so.

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[67] Q. Did you ever hear any other member complain to me, personally, Mr. Perez? A. Not that I remember.

Q. Now, you complain in this suit that the no transfer of seniority policy is a product of certain sections of the collective bargaining agreement between East Texas and the Southern Conference, do you not? A. I think so.

Q. All right. What section of your collective bargaining agreement provides that you cannot transfer your city seniority to a road driver's job, Mr. Perez? A. I don't know what section.

Q. Does the contract say that? A. I know that it has two different—it defines a road driver and a city driver.

Q. Now, you also say that the local union has accepted this no transfer seniority policy as a product of the bargaining agreement. Is that not part of your complaint? A. I believe so.

Q. And in your answers to the union's questions, submitted to you in this case, you said that they accepted it by abiding by the two contracts. Do you remember that answer? A. Uh huh.

[68] Q. What did you mean, or do you mean, by "abiding by the two contracts"? A. By accepting this, by having two different contracts, and going under contract with the company under two different contracts like that.

Q. What do you feel that the union should have done

with reference to changing that policy? A. I believe it shouldn't be there. I do not know what the union could have done to change it, except that negotiate contracts without it.

Q. All right. How many employees of East Texas in San Antonio have made applications to transfer to road driver jobs, that you, personally, know of? A. Three, besides myself.

Q. Who are the three besides yourself? A. Modesto Herrera, Jesus Rodriguez, and Trinidad Gomez.

Q. That is all you know that have made applications to transfer? A. That is all that I know of, yes.

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[86] Q. You told Shafer at that time you were filing a charge against the union? A. Yes.

Q. For what reason? A. The reason that we were not allowed to go on the road and things of that nature.

Q. Where were you when you told him this? A. In his office.

Q. All right.

(Whereupon the deposition recessed at 12:00 o'clock, noon, and reconvened at 2:00 o'clock, p.m., at which time the following proceedings were had)

CONTINUED DIRECT EXAMINATION

QUESTIONS BY MR. PENSHORN:

(Whereupon local Exhibits A, B and C were marked for Identification)

Q. Mr. Perez, in paragraph 8(b), or, excuse me, correction. Paragraph 8(a) of the complaint which you have filed in this suit, you make the complaint that Local 657 has accepted an acquiesced in the discriminatory [87] conduct of East Texas Motor Freight and the Southern Conference, despite numerous requests for assistance by plaintiffs, and

members of their class. Do you remember that particular part of your complaint in this suit? A. Yes.

Q. All right, sir. Now, I want to call your attention to that part of what I have just read, which says "Despite numerous requests for assistance by plaintiffs and members of their class." Now, the class, as I understand, that you are attempting to sue for in this case is all Mexican American and Negroe city drivers working for East Texas in the State of Texas. Is that the class that you are bringing this suit on behalf of? A. The actual papers, the way it is prepared, and all of that, was not prepared by me. My suit is there is discrimination against Mexican Americans and Blacks by East Texas Motor Freight.

Q. But my question is, you understand, do you not, that you and Mr. Herrera and Mr. Rodriguez are bringing this suit not only for yourselves, individually, but for all Mexican American and Negroe city drivers of East Texas in the State of Texas. Is that not your understanding of what you are doing? A. I am not sure that I understand, for the reason that I filed against East Texas Motor Freight and East Texas [88] Motor Freight has many states, covers many territories, or jurisdictions, or whatever, and also the union.

Q. Well, this deals with who you have brought the suit against, what I am asking you is, is it your understanding that you have brought this suit on behalf of certain minority groups as a class? A. Yes.

Q. All right. What class, as you understand it, does that include? A. That class that is Mexican American and Negroe, that is employed by East Texas Motor Freight. That is applied to East Texas Motor Freight.

Q. All right. Now, aside from yourself and Mr. Moe Herrera and Mr. Jesse Rodriguez, how many other people in this class that you have just described, have you heard ask for assistance by Local 657 in eliminating racial discrimination? A. I have not heard anybody exactly say it

They were involved, because they were in the same type of situation as I was, or am.

Q. But my question to you, though, is have you heard anyone make a request or complaint, either, to any representative of Local 657 about racial discrimination that worked for East Texas Motor Freight? A. Locally, I have heard several people inquire, yes.

[89] Q. All right. Who did you hear inquire, first of all? A. People—members in other freight lines.

Q. All right. Now, that is not part of the class you are representing, though, Mr. Perez, you are only representing East Texas Employees, are you not? A. I already named the four, and I said there were about six that came to me and said so—and actually complained. Others just talked about it.

Q. All right. My question to you is this: I want the names of the people in this class that you have heard make complaints about racial discrimination to Local 657? A. The names that I already mentioned.

Q. Who are they? A. Moe Herrera, Jesus Rodriguez, Trinidad Gomez, and Lupe Morales.

Q. Lupe who? A. Lupe Morales.

Q. Who else? Anyone else? A. There is a couple of others, that I am sure, but I don't know their names.

Q. Does Trinidad Gomez work for East Texas Motor Freight? A. As far as I know.

Q. He did when you left there? A. Yes.

[90] Q. What about Lupe Morales? Does he work for East Texas Motor Freight? A. He worked for East Texas Motor Freight.

Q. All right. When did you hear Trinidad Gomez make a complaint to a representative of the local union about racial discrimination? A. Well, to begin with, he complained to me several times, and I would, in turn, take and complain to Ray Shafer with Local 657.

Q. What did Trinidad Gomez say to you? A. Different occasions, different things. What I can remember is that,

"how come we are not allowed to go on the road?" We would have general discussions, and long talks, regarding why we Mexican Americans were not on the road. Why the company did not allow us to use the road equipment and things of this nature.

Q. All right. On how many different occasions did he talk to you about this, as much as you can recall? A. On several occasions.

Q. Did he ever specifically complain to you that East Texas was discriminating against Mexican Americans? A. Yes.

Q. Exactly what did he say in that regard? A. Something similar to what I have already said. (speaking in Spanish) that this SOB, or something like that, in [91] reference—this is as close as I can get to it myself—meaning that the company did not allow us to go on the road. They were mistreating us by doing this. They were being mad to us.

Q. All right. Anything else he told you? A. I don't remember what else, but in general discussion we just talked back and forth.

Q. What about Lupe Morales? What did he say about the company? A. Ever since he started working for East Texas Motor Freight he would like to have a job as a road driver, but nothing, and hearing all over that this was not possible, he just didn't even bother to ask most of the time, but he was asking me.

Q. Did you ever hear him complain to any officer or representative of Local 657? A. He told me several times that he discussed it with one of his friends, or compadres, who is a union officer. What he might have said or what, no. He just generally said he was dissatisfied with the fact that he could not go on the road.

Q. But at any rate, you have never heard either Trinidad Gomez or Lupe Morales complain to any other union officer or representative? Is that right? A. Other than myself, no.

[92] Q. All right. And this was the time when you were

an officer of the local union? Is that right? A. And I would relay the message to the local.

Q. Who did you relay it to? A. Ray Shafer and the Board, one time.

Q. On both occasions? A. Same occasion that I am talking about.

Q. You told them about both men at the same time? A. Yes. I used the term, I believe, "several employees of East Texas Motor Freight."

Q. All right. Are there any other members of this class that you are bringing this suit on behalf of, whom you have heard make requests for assistance of the local union? A. I haven't heard any.

Q. This is all? A. I heard their complaints myself, but I didn't hear them tell another member of the union.

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[95] Q. There have been meetings called for the purpose of finding out what the employees of East Texas and other freight lines to be affected by the contract want. Is that right? A. Yes.

Q. All right. Now, have you attended some of those meetings? A. Yes.

Q. All right. Now, at any of those meetings, Mr. Perez, have you, personally, ever requested that a demand be submitted for a single contract for road [96] and city drivers working for East Texas Motor Freight? A. Not in those terms, no.

Q. And in what terms have you spoke about it? A. Questioning about the road, the pay, the advancement and things of that nature.

Q. You have never made a request that one contract be negotiated for all road and city drivers of East Texas? Is that right? A. Right.

Q. Have you ever heard any other employee of East Texas at any of those meetings made such a request?

Q. No. Your answer is no? A. No.

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[98] Q. All right, sir. So you, personally, have never made a request or tried to make a request that in the contract with East Texas you be permitted to carry your city seniority to a road job, have you? A. Not like you say it, no.

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[99] Q. All right. Did you ever at any of these contract negotiation meetings get up and state or request that the union not negotiate separate contracts for road and city drivers? A. No. For the same reasons.

Q. Did you ever hear any other person at one of those meetings make such a statement? A. No.

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[110] Q. All right. Now, again directing your attention to the meetings, Mr. Perez, which you attended which were called for the purpose of voting upon the contract proposals, I direct your attention just to that. I would like to ask you if at any of those meetings that you attended, you ever heard anyone get up and complain about there being separate contracts, or proposed separate contracts for road and city drivers? A. Not that I remember.

Q. At any of those meetings, at which they submitted the proposed contracts to you to vote upon that you attended did you ever hear any one get up and complain about not being able to transfer to a road job and carry your company seniority? A. In those terms, no.

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[224] Q. To the best of your recollection, at what point in time did they stop telling you that they didn't allow city drivers to transfer to the road? A. I do not remember exactly.

Q. I know. I don't expect you to. A. At first, the thing was that we just couldn't. Later on, I don't know, maybe '66 or '67, they started changing: "You have to go apply in Dallas, and do it this way and that way."

Q. Did you ever apply in Dallas? A. No. They were never specific. They asked—we asked how to get applications. And I keep saying "we". But most of the time it was done in groups, or prior to meetings, like that.

Q. You never sent a letter to Dallas? A. Mr. Sager, Wes Sager, said he was going to send this letter.

Q. Was this in 1970, just prior to the time you signed that letter? A. I believe it was in 1970, yes.

[225] Q. What was the context? What were the circumstances that resulted in this letter that is attached to your deposition as Exhibit A?

MR. HEIDELBERG: To clear my own mind, it hasn't been attached, yet.

MR. WEISS: It is attached to the answers to the interrogatories.

MR. HEIDELBERG: Oh, yeah. I thought you were talking about the deposition.

A. I did not understand that, would you repeat it?

Q. What was the situation—what were the circumstances that came about that you ended up signing the letter that is attached to your answers to the interrogatories about applying for a road driving job with the company? A. I had been after a road driver job for many, many years, and finally I just more or less got fed up with being told "No" and I wanted to make it more or less official, or something like that, other than just verbally asking and getting nowhere. And I wrote out a little note to Mr. Wes Sager telling him that I wanted him to provide me an application to apply for a road job. He said I had already applied when I first started working there. And I said, "well, I want to reapply again, or whatever it takes. I want a road driver job." I explained to him they paid better. I explained to him [226] that I would be willing to transfer. You know, he would ask me also at this time, and we discussed it and finally he said that he couldn't do it. And I handed him the

note that I made, and then later on he called me back, about two hours later, and he already had a printed letter stating, you know—you know, the one that is attached there, and I signed his copy and I signed my copy.

Q. Were you present when Mr. Rodriguez signed his copy? A. No.

Q. Do you recall the circumstances that resulted in Mr. Rodriguez signing his copy? A. I do not know exactly. I heard them discuss it later that he was called into the office, I believe. I was not there. I don't know how he got his.

Q. Did Mr. Lopez sign a copy of the letter?

MR. HEIDELBERG: Who is Mr. Lopez?

MR. RISSETTO: Somebody he referred to.

Q. No. Trinidad Lopez.

MR. HEIDELBERG: Gomez.

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[243] Q. I will call your attention to what has been introduced as East Texas Exhibit A, and ask you to look at this. This is the application form. I will ask you to look at this and I will bring your attention to a section appearing on the first page of this document, which is entitled "lineage" and ask that you read what is—what you printed in that second when you applied? A. "Latin American".

Q. Well, you agree with me that it also indicates, evidently printed by the company, "English, Irish, French, Hebrew, German, etc." A. Yes, I saw those. That is the reason I distinguished "Latin American".

Q. Drawing your attention to East Texas Exhibit B, which is a copy—a four page copy of an original petition that was filed in Bexar County, Texas, with yourself as the plaintiff and National Surety Corporation as the defendant, did you have anything to do with the actual writing of this particular petition? A. No, sir.

Q. Who did. A. I believe Mr. Ed Penshorn.

Q. Mr. Penshorn was your attorney? A. Yes.
Q. For this purpose.

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[Deposition of Jesse Rodriguez]

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[5] Q. Now, prior to April of '65 for whom did you work, Mr. Rodriguez? A. Prior to April of '65?
Q. Yes. A. Tiner Dairies.
Q. How long did you work for Tiner Dairies? A. Oh, approximately around a year or so.
Q. What type of work did you do for them? A. I was a driver.
Q. Truckdriver? A. Yes, sir.

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[6] Q. Mr. Rodriguez, in your complaint in this lawsuit, one of the things you complain of is East Texas has a policy excluding Mexican American and black city employees from Line Driver jobs. Is that right? A. Yes, sir.
Q. Now, how did you learn that East Texas had such a policy as this? A. It was by word of mouth from the company.
Q. When was this that you first learned of it? A. I really can't recall the specific date or the month, but it was sometime between February of '70 through August of '70.
Q. Who told you that the company had such a policy? A. To the best of my recollection, I believe it was Bierele.
Q. Is he an employee of East Txas Motor Freight? A. At this time he is the Assistant Terminal Manager.
Q. At the time he told you this, was he an employee of East Texas? A. Yes, sir.
Q. What was his position at that time? A. I don't know if he was Assistant General Manager, but at [7] that time he was a foreman.

Q. At the time he told you this? A. Yes.
Q. And this was sometime between April and September of 1970. A. Yes, sir. Sometime between that time.
Q. Can you pinpoint the date of this conversation any better than within that period between April and September of '70? A. Not really. I would like to try, but I would be guessing. I know it was in between that time.
Q. All right. Now, where did this conversation between you and Mr. Bierele take place? A. There at the Terminal at East Texas.

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[8] Q. And what was the reason for your approaching him to talk to him? A. Well, East Texas was about to purchase VCS.
Q. What is V-C-S, Mr. Rodriguez? A. Valley Copper State, which is a freight line.
Q. All right, sir. Go ahead. A. And they had drivers here in San Antonio, based here—Line Drivers. And I was interested in such a position and therefore, I inquired about the possibility of such a job.
Q. All right. And what did Mr. Bierele tell you in response to your inquiry? A. Well, I can't recall the exact words, but—I really can't recall his exact words.
Q. Well, as best you can recall, tell us what he said? A. Well, something about the no transfer policy, I believe. The city drivers not being able to transfer.
Q. Did he say anything else on this occasion? A. Not that I can recall.

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Q. So your only basis for complaining to that effect in this lawsuit is the fact that you haven't seen any from other terminals come to San Antonio in tractor/trailers?
[9] excluding Mexican-Americans and Negroes from Line Driver jobs? A. What caused me to complain?
Q. Yes. As a result of that conversation. A. Well, to the best of my knowledge, I don't know of East Texas ever hir-

ing Mexican-Americans, or Blacks, on the road positions, and I felt that I was being kept out from such a job because of my race.

Q. Why do you that East Texas has never hired Mexican-Americans or Negroes for road driver jobs? A. Well, to the best of my knowledge, I have never heard of any.

Q. Well, what is it that you know about their operation that causes you to conclude that, Mr. Rodriguez? A. The Line Drivers that come into our terminal are all Anglos.

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Q. Has anyone ever told you that East Texas has a policy of excluding Mexican-Americans and Negroes from Line Driver jobs? A. No.

Q. So your only basis for complaining to that effect in this lawsuit is the fact that you haven't seen any from other terminals come to San Antonio in tractor/trailers? [10] A. No, sir. That is not my only basis.

Q. What is the rest of your basis for making this complaint? A. There are two separate contracts for city drivers and road drivers.

Q. All right, sir. Anything else? A. The no transfer policy by East Texas Motor Freight.

Q. All right, sir. Any other reason why you make this particular complaint? A. Also, the reason that I think that these two policies tend to exclude Mexican-Americans and Blacks from such positions.

Q. Well, why do you say that these two policies tend to exclude them from such jobs? Why do such policies do that, in your mind? A. In my mind, the Union and the companies negotiate two separate contracts, and it is my belief that these two contracts regulate the Mexican-American and Blacks to lower, more physical and hazardous work, as lifting heavy materials and working at strenuous work in the cities. They allow the Anglos to drive, and much less strenuous work on the road with better pay.

Q. Has East Texas Motor Freight ever had any line

driver jobs at the San Antonio Terminal, since you have been working there? A. No.

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[11] Q. Mr. Rodriguez, I believe that you have stated that you talked to Ray Shafer about getting a job as a Line Driver with East Texas Motor Freight. Is that correct, sir? A. Yes, that's correct.

Q. And on how many different occasions did you speak with Ray Shafer about such a job? A. That I can recall, approximately about three times.

Q. All right. And when was the first time that you spoke to him about such a job? A. To the best of my recollection, the first time was on or about February of '70?

Q. Where did this conversation take place? [12] A. At the Hall.

Q. What Hall? A. Local 657.

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[13] Q. But at any rate, is it correct to say, Mr. Rodriguez, that this meeting was called by the employees of East Texas to discuss a number of problems with the Union that [14] the men had at East Texas Motor Freight? A. It wasn't problems. It was just mainly they wanted information as to when it would be final, the merger, and things like that.

Q. I see. Well, in other words, you had heard that East Texas was going to buy another freight line and you and other members wanted some information concerning this? Is that correct? And the merger. A. That, and we were interested in road jobs.

Q. All right. Now, at that particular meeting, which I believe you stated was in February of 1970, or approximately that time—is that correct, sir? A. Right.

Q. Did you, personally, speak to Mr. Shafer in this meeting? A. Yes.

Q. What did you say to him? A. The exact words I can't remember, other than I asked him to—that I was interested in going on the road.

Q. As a Line Driver? A. As a Line Driver.

Q. When? Did you mean immediately, or after they bought out this other company? A. I wasn't interested in the time, Mr. Penshorn, I was just interested in getting it.

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[15] Q. All right. What did Mr. Shafer say to—in reply to your statement? A. The best I can recall is that he said he would look into it.

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[16] Q. Now, after that meeting, did you ever have an occasion to ask Mr. Shafer what he found out about your getting a Line Driver's job? A. I believe that I had occasion to run into him at East Texas and I asked him about it again. And he might have brought up the subject of no transfer policy that East Texas had.

Q. He might have? Is that your answer? A. Well, I think he did. I remember him saying that—a couple of things about East Texas having this policy and that he had looked into it and he couldn't tell the companies who to hire.

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[19] Q. All right. Now, when was the next and third time that you talked to Shafer about getting a Line Driver's job? A. Again it was there at the terminal. He was there, I guess on business, and it was after that again. After that second meeting there that I ran into him there.

Q. Approximately how long after the second meeting? A. Well, it was fairly close—just prior to my filing the charge. I don't remember the specific month or the date.

Q. Only you and Shafer were present at that time? A. That's correct.

Q. All right. Now, exactly what did you say to Shafer on that third occasion? A. That I was still interested in such a position.

Q. Meaning what? A. That I still wanted to go on the road.

Q. As a Line Driver? A. That's right.

[20] Q. Did you mean by this, any place that you could get such a job? A. Yes, I guess so.

Q. All right. Excuse me, go ahead. A. When you said "anyplace", I assume you are talking about East Texas?

Q. Yes, sir. A. All right.

Q. Did you say anything else to him on this third occasion that you talked to him about getting a Line Driver's job? A. No. The same. It was the same. I still made the same request that I still wanted to go on the road.

Q. That is all you said to him? A. To the best of my recollection. In general, that is more or less what I said.

Q. All right. Exactly what did Mr. Shafer say to you in reply? A. To the best of my recollection, I believe that he said that because—well, basing what he said before and what he said between was that he couldn't make, you know, East Texas hire people.

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[21] Q. Mr. Rodriguez, haye you ever heard any other em-
[22] ployee of East Texas Motor Freight Line complain to Ray Shafer that the company was discriminating against Mexican-Americans and Negroes? A. No.

Q. Have you ever heard any other employee of East Texas Motor Freight Lines complain to any representative of the Union about East Texas discriminating against Mexican-Americans and Negroes? A. Have I ever heard?

Q. Yes, sir, you, personally. Have you ever heard any other employee make this complaint with any other representative of the Union? A. No, sir.

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[23] Q. All right. Now, you have never complained to any local representative about Mexican-Americans and Negroes not being in these jobs, and you have never heard any other employee of East Texas make this complaint to any union representative. Why do you say that the union should have gone to the company and made this demand? A. Because they negotiated two contracts with East Texas.

Q. Any other reason? A. Because the union should have seen that Mexican-Americans and Blacks should have been placed on the road, whether I have heard this complaint or not.

Q. Why do you say that? A. Because if the Teamsters was aware of the no transfer policy, they should have done something to affect whether this policy could be changed to allow Mexican-Americans and Blacks on the road.

Q. When you refer to "Union", are you referring to Local 657? A. Yes. That is the one that represents me down here. This is the one I am concerned with.

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[26] COURT REPORTER: "Q. Mr. Rodriguez, another one of your complaints in your lawsuit is that East Texas has a policy of not allowing City Drivers to transfer to Line Driver jobs, without loss of company seniority for job bidding and layoff rights. Is that not part of your complaint in this suit?" A. That is right.

Q. All right, sir. Now, in your answer to the Union questions that were asked of you, you said that the Union hadn't taken any action to remove this policy. Was that your answer? A. Yes, that's my answer.

Q. What action did you want the union to take? A. Well to see to it that the employees would have the right to transfer without loss of seniority and bidding and so on.

Q. Did you, personally, ever make the request like this of anyone in—representing the Union? A. No.

Q. Did you ever hear any other East Texas driver do it?

[27] A. No.

Q. Have you, personally, ever made any complaint to Local 657 that this no transfer policy discriminated against Mexican-Americans and Negroes, Mr. Rodriguez? A. Have I personally made the complaint?

Q. Yes, sir. A. No, sir.

Q. Have you ever heard any other East Texas driver do it? A. No, sir.

Q. Have you ever heard any Union member make such a complaint to a representative of the Local? A. No, sir.

Q. Mr. Rodriguez, one of your complaints in this lawsuit is that Local 657 has accepted the policy of East Texas in keeping Mexican-Americans and Blacks from Line Driver jobs. Is that correct?

Q. And I believe that you stated in answer to the Union's questions submitted to you as to how they had accepted it, you stated by not going to the company and asking them to put Mexican-Americans and Blacks in these Line Driver jobs. Was that not your answer? A. Yes.

Q. Is that the only way that Local 657 has accepted this policy that you are complaining about? A. No.

[28] Q. How else? A. By signing two separate agreements for Road Drivers and City Drivers.

Q. How else? A. I guess that covers it.

Q. All right. Is it your contention in this suit that this is all the fault of Ray Shafer? A. It is the fault of the person responsible for signing that contract.

Q. Anyone else? A. I would assume that it is the fault of the Conference also, since we are under the Conference.

Q. You mean the Southern Conference of Teamsters? A. Right.

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[39] Q. Mr. Rodriguez, do you know of any white city driver who worked at the San Antonio Terminal of East Texas who transferred to a road driver's job? A. White city driver that transferred here to San Antonio to the road?

Q. To a road driver job anyplace with East Texas? A. But he originally worked here?

Q. Yes, sir. A. No, sir. I don't know of any.

Q. Do you know of a white city driver working for East Texas anyplace who transferred to a road driver's job? A. I heard of one.

Q. What did you hear? A. That he had transferred to the road and that his father had been on the road for twenty years, and they made a good team.

Q. Where was this man working at the time he transferred? A. I believe it was Dallas.

Q. For East Texas Motor Freight? A. Yes, sir.

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[40] Q. From whom did you hear this? A. Company magazine.

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Q. All right. Do you know of any road drivers or line drivers who have been hired by the management of East Texas in San Antonio? A. No. I haven't heard of any.

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[41] Q. All right. Now, that would mean that there has been two contracts negotiated between the Union and East Texas since you have been a member of the Union? Isn't that right? A. That's right.

Q. All right. Now, are not the freight drivers who are covered by these contracts not called into a special meeting prior to the negotiation of the contract to find out what they want in the new contract? A. I see what you mean. You were leading to that before. This is done, but the way I understood your question before was they brought East Texas personnel only. This is the way I understood your first question.

Q. I see. What is your answer now? A. Well, we do hold a special meeting or a meeting, or whatever you call it, prior to a contract.

Q. And who attends those special meetings? [42] A. Well, the whole membership. Not just East Texas.

Q. The whole membership of the Union, or just the membership to which the contract will apply? A. I would think that it was all the members of the local that the contract is going to apply to.

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Q. Well have you attended such of these special meetings? Have you attended any of these special meetings you were telling us about that were called prior to negotiations? A. Yes.

Q. You have? How many have you attended? A. Since there have only been two, I have been there when they negotiated the contracts, so I have been there——

Q. ——twice? A. Yes.

Q. Let's get it straight. You have attended two of these special meetings? A. Right.

Q. That have been held by your Local Union to find out what the members want in their new contract? Is that right? A. Right.

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[43] Q. Now, the first of these meetings which you attended, [44] did you, personally, ever ask that the City Drivers be given the right to transfer to the road with their city seniority? A. At the first meeting, no.

Q. Did you hear anyone else make such a request? A. No.

Q. Your answer is what? A. No.

Q. At this first contract negotiation meeting that you attended, and incidentally, when was that? A. I think it was in '67.

Q. '67. A. I think so.

Q. All right. It was before that contract went into effect. A. Yes.

Q. At that meeting, did you personally request that one contract be negotiated for City and Road Drivers? A. No, sir.

Q. Did you hear anyone else make such a request? A. No, sir.

Q. At that first contract negotiation meeting that you attended, did you, personally, make any complaint about the contracts' discriminating against Mexican-Americans and Negroes? A. No, sir.

[45] Q. Did you hear anyone else make such a complaint? A. No, sir.

Q. At that first meeting, did you personally request any changes whatsoever in the new contract? A. No, sir.

Q. Did you hear any changes that you can remember that wert made by other members? A. No, sir, I can't.

Q. Now, after that particular contract was negotiated, Mr. Rodriguez, was it not brought back to the same employees to vote on to see whether they approved it? A. Yes.

Q. And did you attend that ratification or vote meeting? A. Yes.

Q. Did you vote for the contract that was submitted to you? A. Yes.

Q. Do you remember anyone voting against it? A. Well, no. I can't remember.

Q. Do you remember anyone complaining about any of the terms in the proposed contract that was brought back to you to vote on? A. No.

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[46] Q. And that would be the contract that you are presently working under, would it not? A. That's correct.

Q. When was the contract negotiation meeting held? A. I don't remember the day, but it was in '70.

Q. Do you know the terms of the present contract—the date it begins and ends? A. I think they extended it from its usual termination date which was sometime in April, to July. So it will terminate in July.

Q. Of which year? A. '73.

Q. '73? And do you know the month and year that it began? A. Well, let's see. The old contract terminated around April of '70 and I believe they didn't sign a contract until sometime in July, or around there, or in between that time. April and July. I don't have access to that information. I don't know when they signed it.

Q. Well, it is a three year contract, is it not? A. Yes.

Q. The current contract you work under? A. Yes.

Q. And it extends approximately from April of '70 to [47] April or May of '73? Isn't that about right? A. Well, I actually believe it was going to end in July of '73.

Q. All right. April of '72, maybe July of '73. Approximately three years? A. Yes.

Q. Now, before that contract was signed between the company and the Union, there was a meeting at which all of the East Texas employees were asked to attend for the purpose of finding out what they wanted in that contract, wasn't there? A. Uh huh.

Q. Did you, personally, attend that meeting? A. I attended one where they—where the Local had presented to us a contract and asked us to vote on it.

Q. That was for the purpose of voting on it? A. Yes.

Q. But before that, before the Union even started negotiations, didn't you have a meeting of the East Texas and other freight line employees to find out what you wanted in this new contract? A. There might have been. I don't recall attending one.

Q. You did not attend it? A. No, sir.

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[48] Q. All right. Well, is it your testimony that you did not attend the meeting of the employees at which they gave what they wanted in the new contract that you are now working under? Is that your testimony? A. Yes. I believe so. I believe that is my answer, because I did attend a meeting, but it was just—the Union was recommending to us a contract offer. I remember attending that meeting.

Q. This was only to vote, though, on the contract? A. I believe so.

[49] Q. When was that meeting? A. I don't really recall.

Q. What year? Do you remember what year? A. It was in '70.

Q. To vote on the offer that the companies had made? A. Well, we didn't actually vote at that meeting. I think they discussed it. I think there was a ballot mailed to our

homes and then we voted and mailed that ballot into Washington.

Q. Did you vote against it? A. Yes.

Q. Why. A. Well, I remember when we discussed it, there at the Hall, I didn't particularly care for the contract. They were offering $1.10 and Chicago was staying out for $1.89, or something like that. And I figured we should have stayed out with our brothers.

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[50] Q. Did you have any other objection to the contract that was presented to you that you were going to vote on? A. Well, no. That's all.

Q. Did you voice personally any objections to that contract that—proposal that was submitted to you at that Union meeting? A. No. I didn't voice any objection out loud, or anything.

Q. Did you hear anyone else voice any objections to it? A. No.

Q. And the only reason you voted against it was because the drivers in Chicago were holding out and you felt that you should too? Is that right? A. I thought I should stay out with them too, since we were brothers.

Q. Now, Mr. Rodriguez, in order that I am sure that I understand your testimony, I want to ask you if you, personally, have ever asked any representative of Local 657, or told any representative of Local 657 that you wanted one contract negotiated for City and Road Drivers? A. No, I didn't.

Q. Have you ever heard any other Union member make such a request or demand of any representative of Local 657? A. No, sir.

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[51] Q. Have you ever contacted, either verbally or in writing, anyone in the Southern Conference of Teamsters of the complaints that you are making in this lawsuit? A. No.

Q. Have you ever contacted, either verbally or in writing, anyone in the International Brotherhood of Teamsters about any complaint which you are making in this lawsuit? A. No.

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[54] Q. Mr. Rodriguez, I hand you what has been marked as East Texas Exhibit A. This is your application for employment to East Texas Motor Freight? Is that correct? A. Yes, sir.

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Q. Now, this application is dated August 24, 1965, is it not? A. Yes.

Q. And this was the only application you have ever filed for employment with East Texas. That is correct, is it not? A. I don't know if you would consider this an application, [55] but I was given a letter stating that they would consider me for the road.

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[59] Q. Now, from the hesitation in your answer, I gather that perhaps you have driven over the road for somebody other than a truckline. If so, please tell us about that. A. For Dentler-Facs.

Q. For Dentler-Facs? A. Yes, sir.

Q. When did you work for Dentler-acs? A. Sometime from June of '70 to around April of '71.

Q. And was that while you were on layoff status from East Texas? A. Yes, sir.

Q. And your job at Dentler-Facs, which is a snack food company? A. Yes, sir.

Q. Potato chip and corn chip company here in San Antonio? [60] A. Yes, sir.

Q. You did drive the tractor and trailer over the road? A. Yes, sir.

Q. Was it a ten gear tractor? A. Yes, sir.

Q. Was that all you did for Dentler-Facs? A. Yes, sir.

Q. And where did you travel? Where did you go? A. From here to Houston.

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[85] Q. Okay. All right. You have told us that the first time you became interested, or the first time you told the management of East Texas here of your interest in Transferring to a road job was sometime in 1970 at about the time of the merger with VCS? A. Yes, sir.

Q. Prior to that time, you hadn't given any consideration to trying to get a road job? Is that correct? A. Yes, sir.

Q. Now, of course, you knew there were no road drivers stationed in San Antonio. That's correct, is it not? I mean up to the time of the Copper State Merger? A. Right. I knew that.

Q. And you, of course, didn't want to move away from San Antonio, being a native here and having a home and family here? Isn't that correct? A. No, sir. That had nothing to do with me not asking before.

Q. Why didn't you ask before? A. I wasn't interested before.

[86] Q. Why did you suddenly become interested? A. Because of the possibility of becoming a road driver.

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[88] Q. All right. So you say you went to Mr. Bierele and said you were interested in transferring to a road job? A. That's correct.

Q. All right. Now, I want you to detail that conversation to us, as nearly as you can remember it, giving the exact words that you and Mr. Bierele used, and if you can't do that, just the substance of what you said and what Mr. Bierele said. Just start at the beginnnig and detail it to us. A. Well, like I said before, I can't remember the exact words, but the subject involved was that I wanted to go on the road, and Mr. Bierele brought out that——

Q. What did he say? A. That East Texas had no transfer policy.

Q. All right. What did you say? A. I mentioned about the merger and if there was any possibility for me to go on, because of the line drivers they had here.

Q. What did he say? A. That he didn't know what East Texas was going to do after the merger; that he couldn't answer.

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[90] Q. Well, you say the first conversation was in approximately February, 1970. Now, how long after that was the second conversation? A. Well, sometime, I guess, between or around June, or around there. That time.

Q. Around June of 1970? A. Around that time.

Q. Here again, tell us what you said and what Mr. Bierele said. A. That I told him in general that I was still interested [91] in going on the road and that is the time that he mentioned.

Q. What did he say? A. That East Texas had a hundred drivers laid off, or something like that.

Q. A hundred drivers laid off. Now, did he tell you that when the merger occurred, the Valley Copper State employees merged their seniority into East Texas? In other words, the seniority they accumulated with Copper State remained in effect with East Texas? A. Yes.

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[97] Q. Well, let's see. The Terminal Manager back in 1970 was Sager. That's correct, is it not? A. Mr. Wes Sager.

Q. Did you have any conversation with Mr. Sager about transferring? A. Yes, sir.

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Q. Mr. Sager called you in? A. Right.

Q. Tell us what he said and what you said? A. Well, he just said that Ezra had told him I was interested in a road driver's job and he had a letter there typed saying that because of my qualifications and so on that they would consider me for an on the road job, and he asked me to sign the letter for him in his office, and I signed it and he signed it.

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[98] Q. All right. Now, this is dated. Follow this with me. This is dated August 21, 1970, addressed to Mr. Sager as Terminal Manager of ETMF Freight System here in San Antonio, signed by you, and in the letter you say, "This is to advise that I, Mr. Jesus Rodriguez, Jr., employed as a City Pickup and Delivery Driver, San Antonio Terminal, am applying for a road or a line driver job of this date with ETMF Freight System. I fully realize that if I am accepted as a road of line driver I will lose my City Seniority from the date of my employment, which is September 21, 1965. I feel like my city driving record will more than speak for itself and that I am fully qualified to fulfill the duties of a road or line driver for ETMF Freight System." That's the letter is it not? A. Yes, sir.

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[127] Q. Okay. Were you aware at that time in time that East Texas didn't have a road operation in San Antonio? A. No, sir. I wasn't aware at all.

S. Did you ever come to—— A. Aware that they what?

Q. That were not running road drivers out of San Antonio. A. Oh. No. I wasn't aware.

Q. So what was your understanding that you were applying for? A. When I——

Q. ——filled out the application? A. Truckdriver.

Q. City or road? A. At the time, to be very honest with you, city.

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[130] Q. When did they give you your first driving test at East Texas? A. They never did.

Q. They hired you straight off without a driving test? A. Yes.

Q. Did they subsequent to your employment, give you a driving test? Do you recall the first one they gave you? A. I think the first driving test I had was this year. The mechanic took me out on the road tractor and took me around the block. I was driving and he was sitting there with me.

Q. And that was really your first recollection of—— A. Of a driving test at East Texas. That was this year.

Q. In other words, what you are saying is—I just want to get this clear—that they really didn't have a formal qualification? You didn't have to qualify out on a ten gear or fifteen gear and straight truck? A. No. In fact, I don't know of any company that ever did.

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[134] Q. What kind of—you stated you made your first application for transfer in 1970 for road driving? A. Uh huh.

Q. At that point in time how much experience did you consider yourself as a skilled handler of road equipment at that point in time? A. At that time I had driven enough in the city. I had driven enough trailers and stuff like that, and I [135] considered myself able to handle anything and still feel that way.

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[138] Q. Was the VCS merger—how did that relate to that period of layoff that you were on? A. Well, we had a lot of men on layoff.

Q. As a result of VCS? A. Well, I can't say it was because of VCS. We had just merged and we had a layoff.

Q. Was there a VCS Terminal in San Antonio? A. Yes.

Q. And there was an East Texas terminal in San Antonio? A. Yes, sir.

Q. What happened to them after the merger? A. They moved into our terminal with us.

Q. Did they dovetail in? A. No. They——

Q. ——they blended? In other words, they brought in their old seniority date from the other terminal? A. Right.

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[143] Q. Okay. Would you be willing to transfer anywhere in East Texas' system for a road driving job? A. I think if they offered me a list of the possibilities, instead of just saying, "you are going to go there", that way, I mean, I want to consider it that way.

Mr. Weiss: He hasn't answered your question.

Court Reporter: "Would you be willing to transfer anywhere in East Texas' system for a road driving job?" A. Yes.

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[145] Q. What companies operate domiciled road drivers in San Antonio? A. What companies?

Q. Yeah. A. The only one I know of is Leeway.

Q. Have you ever applied to them for employment? A. Yes.

Q. Recently? A. It was around the time that I was inquiring at East Texas too.

Q. Could you give me a date on that? Do you know just a month and year? A. It was in—sometime around March or April of '70.

Q. Is that the only time you applied to them for employment? A. For road, yes.

Q. For road? What disposition was made of your application? A. Probably threw it in the trash can. I don't know what he did. The answer is, I don't know.

[3]

[Deposition of Modesto Herrera]

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Modesto Herrera, a witness of lawful age, being first duly sworn in the above cause, testified on his oath as follows:

Direct Examination

Questions by Mr. Penshorn:

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[4] Q. Now, I believe that you went to work for East Texas Motor Freight as a regular employee on May 3, 1965. Is that correct? A. That's correct, sir.

Q. Prior to this did you work for them as a casual driver? A. Yes, sir.

Q. About how long, Mr. Herrera? A. Back to June, '64 on and off.

Q. About the time that you joined the union you started driving as a casual driver for East Texas and other freight lines; is this correct, or just East Texas? A. No. I worked all over as a casual in 1956 when I first joined the union.

Q. You joined the union in '56? A. 1956, yes, sir.

Q. And from 1956 until May, 1965, you were a casual driver? A. No, sir. I worked regular for Southern Pacific from '68 to—I mean '58—excuse me, sir—to '61.

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[8] Q. I see. Mr. Herrera, how many different times have you asked supervisors or foremen at East Texas for a job as a road driver? A. How many?

Q. Yes, sir, how many different times? A. Rephrase that again. How many?

Q. How many different times have you asked supervisors at East Texas for a—— A. Three times.

Q. Three times? A. Yes, sir.

Q. Now, I believe that the first time that you asked anyone at East Texas for such a job was in April, '65, when you talked to Mr. Roy McCracken. Is that right? A. That's correct, sir.

[9] Q. Will you tell me exactly what you said to him as well as you can remember now, when you talked to Mr. McCracken on this occasion? A. I just asked him what was the procedure to get on the—working for East Texas Motor Freight as a line driver.

Q. Did you say anything else to him on that occasion? A. No, sir. That is all I asked him. That is all I wanted to know.

Q. What did he tell you? A. I do not recall his response, sir.

Q. Now, the next time that you talked to a supervisor at East Texas was also in 1965, that same year. Is that correct, sir? A. That's correct.

Q. And this was to Mr. Ed Asbury? A. That's correct.

Q. Do you remember approximately when in 1965 you talked to him, Mr. Herrera? A. No, I don't remember the exact date, no, sir.

Q. Can you tell me whether it was the first part of the year or the latter part of the year? A. Well, it would be after—between May and September or October, something like that of the year.

Q. That is fine. A. More or less.

[10] Q. Fine. A. I don't know exactly.

Q. In other words, you spoke to Mr. McCrackten about a line driver's job before you even became a regular employee, didn't you? A. Yes, sir.

Q. Now, on the first occasion that you talked to Mr. Asbury about it, exactly what did you say to him as well as you remember? A. I asked Mr. Asbury for a road job for East Texas Motor Freight, and he told me that I didn't qualify.

Q. Did he say why? A. No, sir.

Q. Did you ask him why? A. He just said I didn't qualify.

Q. You didn't ask him why? A. I asked him, but that is all he gave me in answer.

Q. You asked him but he didn't answer you? A. No, he didn't answer me. He just said that I didn't qualify.

Q. That is all he would tell you? A. Yes, sir.

Q. Did he say anything else to you in that conversation? A. I don't recollect anything else.

Q. And that is all that you said to him? [11] A. About a road job, yes, sir.

Q. And asked him why he didn't qualify? Did you ask him? A. Yes, I asked him, but he just said I didn't qualify. He wouldn't answer.

Q. He wouldn't answer you, all right. Now, I believe you talked to him again or a second time. A. Second time.

Q. In '65. Can you tell me approximately when that was, the second occasion? A. The exact date I don't remember, sir, but it was in '65 when I talked to Mr. Asbury.

Q. Was it the latter part of '65? A. More or less.

Q. At any rate? A. Right, more or less.

Q. Now, where were you when you spoke to him on this occasion? A. There at the dock at East Texas Motor Freight.

Q. Anyone else present? A. No, sir, just him and myself.

Q. And you approached him, and what did you say to him? A. I asked him again about the procedure to be a line driver for East Texas Motor Freight, and he replied that East Texas Motor Freight had a policy that city men couldn't transfer to the road. That is all he said.

Q. Did you ask him anything about that policy? [12] A. He said that the policy—how did he say that? He said the policy was not to be changed or something like that, in that order.

Q. I didn't understand you. What did he say? A. He said that East Texas policy was there, that—let me recall. He said East Texas policy was there and couldn't be changed.

Q. Do you recall anything else that he said? A. No, sir, that is all.

Q. Did you say anything else to him? A. No.

Q. Moe, we have got plenty of time, so just take your time, and if you can't remember right offhand and want to think about it, why do that. If you don't understand my question, make me reask it. We have plenty of time. A. All right, sir.

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Q. Have you ever inquired about getting a road driver's job at any other freight line? A. Prior to East Texas?

Q. Yes, sir. A. Texas Arizona in 1962 or '63, something like that, when [13] I worked there under Mr. K. C. Smith, Texas Arizona.

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[14] Q. Mr. Herrera, have you ever asked any representative or [15] officer of your local union 657 for help in getting a road driver's job? A. Mr. Ezell and Mr. Ray Shafer.

Q. Which one did you talk to first about a road driver's job? A. Mr. Shafer.

Q. When did you talk to Mr. Shafer? A. The exact date I don't remember, sir.

Q. Can you tell me as best you can remember? A. Because I made four or five inquiries to them.

Q. Can you remember the year that you talked to Mr. Shafer about it? A. In '69, for one instance.

Q. You talked to him on another occasion about it? A. Yes, sir, numerous occasions.

Q. What did you say? A. Regarding me working—getting a road driver's job with East Texas Motor Freight.

[16] Q. So you spoke to him on three different occasions about it; is that correct? A. Yes, sir.

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[17] Q. What did you say to him about a road driver's job on that first occasion that you talked to him? A. That I

would like to get a road driver's job with East Texas Motor Freight.

Q. What did he say to you? A. That I couldn't get a road driver's job because the city and the road had two different contracts. I could not transfer from the city to the road.

Q. Did he say anything else to you about the road driver's job? A. No, sir. That is all.

Q. Now, I want you to think real carefully in answering this question. Did he tell you that you could not get a road driver's job? Are those the exact words he used? A. Yes, because there were two different contracts, and I couldn't transfer from the city to the road.

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[18] Q. Now, the next time you talked to Mr. Shafer was in 1969, according to your recollection. Where did that conversation take place? A. In the meeting, in the regular union meeting at the local.

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[20] MR. PENSHORN: Strike that.

Q. I believe you told us you talked to Mr. Shafer on a third occasion, a third time. Where did this conversation take place, Mr. Herrera? A. The same place, in the hall.

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Q. And exactly what did you say to him as well as you can recall? A. That I wanted to be a road driver for East Texas Motor [21] Freight.

Q. Is that all you said to him? A. Yes, sir.

Q. What did he say to you on that occasion? A. He said that we had two different contracts from the city to the road and I couldn't transfer.

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[25] Q. Do you think that East Texas Motor Freight for whom you work discriminates against Mexican-Americans?

A. Well, let me tell you this: I made an application in August, 19—the 21st, 1970, a written application with East Texas Motor Freight, and they never have replied, give me an opening or nothing. There have been a lot of openings there at East Texas Motor Freight. They have hired a lot of drivers at East Texas Motor Freight since August 21, 1970, and none to my knowledge has been Mexican-Americans.

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[27] Q. Do you think that your local union 657 has discriminated against you in any way because you are a Mexican-American? A. I don't think so.

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[28] Q. My question is have you personally ever heard any East Texas employee complain to a union representative that the company was discriminating against Mexican-Americans? A. I have heard two different persons.

Q. Complain to union representatives? A. Yes, sir.

Q. Who was one of them? Who were they? A. Sadrach Perez and Jesse Rodriguez.

Q. And what did you heard Sadrach Perez say? A. That East Texas didn't have Mexican-American drivers on the road.

Q. Who did he say that to? A. Mr. Shafer.

Q. When? A. That date I don't remember.

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[29] Q. Now, who was the other person working for East Texas that you heard complain to a union representative? A. Jesse Rodriguez.

Q. And to whom was he talking when he complained? A. To Ray Shafer.

Q. What did he say to Ray Shafer? A. That East Texas Motor Freight didn't have Mexican-American line drivers.

Q. Did he say anything else to Mr. Shafer on that occassion? A. No, sir.

Q. And what did Mr. Shafer say in reply to him? A. He didn't know.

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[32] Q. Have you ever asked a union representative to try to get this policy changed? A. Yes, sir. I have asked Mr. Shafer, and he said he couldn't do nothing about that.

Q. When did you ask Mr. Shafer to do this? A. One time that I asked him how come we had two separate agreements when we could have one, and you have seniority for both. He said that couldn't be done.

Q. Where were you when this conversation took place? [33] A. At the union hall.

Q. Where in the union hall? A. In his office.

Q. Anyone else present? A. Just him and myself.

Q. Is that the only occasion that you asked that the policy be changed? A. Yes, sir.

Q. Now, Mr. Herrera, are you complaining in this suit that East Texas keeps Mexican-Americans and Negroes out of line driver's jobs? A. Please repeat that.

(The reporter thereupon read aloud as follows:)

"Q. Now, Mr. Herrera, are you complaining in this suit that East Texas keeps Mexican-Americans and Negroes out of line driver's jobs?" A. Yes, sir.

Q. Why are you making that complaint? A. Because they don't have no Mexican-American line drivers or Blacks.

Q. Any other reasons? A. Because I wanted to be a line driver for East Texas Motor Freight. I have made written application.

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[37] Q. All right. At any of those meetings that you attended did you personally get up and ask that the new contract allow city drivers to transfer to road jobs with their city seniority? A. Did I do that?

Q. Yes. A. There was one member of the freight line got up and mentioned that.

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[38] Q. Now, have you ever heard any other member get up at one of those meetings and ask that that be done? A. Just once.

Q. Who was that person? A. I don't recollect which one.

Q. When was it? A. At that meeting that we had for negotiation of the new contract.

Q. The one you are presently working under? A. Yes, sir.

Q. Was he a freight driver? A. He was a freight driver.

Q. But you don't know who he was? A. I don't recollect which one it was.

Q. Do you know where he worked? A. I believe at Roadway.

Q. You don't know who he was? A. Not offhand.

Q. What did he say? A. He got up and said that he would like to see the new contract come up with one contract for the city and the [39] road combined.

Q. What else did he say? A. That is all he asked.

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Q. Now, did you at any of these contract negotiation meetings that you attended ever personally get up and ask for just one contract for both city and road drivers at East Texas? A. Me personally?

Q. Yes. A. No, sir.

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[40] Q. Now, directing your attention still, Mr. Herrera, to these meetings of the freight drivers at which you discussed the new contract to be negotiated by the union, did you personally ever make any complaint that the contract discriminated against either Mexican-Americans or Negroes? A. There in the negotiations?

Q. Yes, sir. A. No, sir.

Q. Did you ever hear anyone else do that? A. No, sir.

Q. Have you ever made any request for any changes in the new contract when you attended any of these meetings? A. Regarding what, sir?

Q. Anything. A. I have stated that we wanted sick leave, annual leave—and I don't recollect the other item.

Q. At any rate, you have gotten up in different [41] meetings and requested that changes be made. Isn't that right? A. Yes, sir.

Q. And no one has ever attempted to keep you from asking and making whatever suggestions you wanted to make, have they? A. No, sir.

Q. Now, after a contract has been negotiated between the union and the freight lines, is that contract not brought back to the members of local 657 for them to vote on? A. Before they sign the contract, you mean?

Q. Yes. A. For approval, yes, sir.

Q. Of the members? A. Of the members.

Q. There is a special meeting for the members to vote on the contract, isn't there? A. Yes, sir.

Q. And there always has been since you have been a member of this union, hasn't there? A. Yes, sir .

Q. Have you attended some of those special meetings to vote on the new contract? A. Yes, sir.

Q. Have you ever voted against any of the new contract proposals? [42] A. No, sir.

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Q. At any of those meetings at which you voted on a contract, did you ever get up and voice any objections to the contract proposals that were submitted to you? A. No, sir.

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[43] Q. Have you ever written or talked to anyone with the Southern Conference of Teamsters about anything you are complaining of in this lawsuit? A. Did I?

[44] Q. Yes. A. Personally?

Q. Yes. A. No, sir.

Q. Have you personally ever written or talked to anyone with the International Brotherhood of Teamsters about anything that you are complaining of in this lawsuit? A. Read that again.

(The reporter thereupon read aloud as follows:)

"Q. Have you personally ever written or talked to anyone with the International Brotherhood of Teamsters about anything that you are complaining of in this lawsuit?" A. You mean writing to the International in Washington, D.C.?

Q. Yes, sir, about anything that you are complaining of in this suit. A. That I wrote?

Q. Yes. A. I never wrote anything.

Q. You have never talked to anyone with the International about any of your complaints in this suit? A. No, sir.

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[45] QUESTIONS BY MR. WEISS:

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[46] Q. Now, between 1946 and 1956 when you came to San Antonio what did you do? During that ten year period after you got out of the Navy before you came back to San Antonio, what did you do? A. For a living ?

Q. Yes. A. I drove a truck.

Q. For a truck line? A. Different—not only one truck line, but different places.

Q. Who did you work for? A. In Austin—they changed their names by now.

[47] Q. Just give the names as they were when you worked for them. Did you work for one company or more than one company? A. I worked for more than one company.

Q. During that ten-year period? A. Yes, sir.

Q. How many companies did you work for? A. Four or five.

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[49] Q. How did you happen to decide to start driving for truck lines? A. When I joined the union.

Q. Did you join the union for the purpose of getting a job with a truck line? A. Just driving a truck.

Q. And you joined the union in what year? A. '56.

Q. '56? A. Yes, sir.

Q. And who did you go to work for? You worked as a casual? A. Casual, yes, sir. I worked all over.

Q. You worked as a casual for various truck lines here in San Antonio? [50] A. Right, sir.

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Q. Driving trailers? A. Truck and trailers.

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[102] Q. Of course, you have told us in response to Mr. Penshorn's questions that there have never been any road drivers, any East Texas road drivers domiciled here in San Antonio. A. Not with East Texas, no, sir.

Q. So if you got a road job you would have to move away from [103] San Antonio? A. Yes, sir.

Q. Are you willing to do that? A. Yes, sir.

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Q. Now, you knew that Valley Copper did have some road drivers domiciled here? A. Right, sir.

Q. And you thought that perhaps if you could get one of those jobs you wouldn't have to leave San Antonio? A. Right, sir.

Q. But after the merger occurred in February, 1970, the road drivers that had been here were moved away by East Texas somewhere else. A. Yes, sir.

Q. So that it is true that there have never been any road drivers here? [104] A. Right.

Q. Now, at the present time you have got two separate rosters, two separate contracts. A. Yes, sir.

Q. For road drivers and San Antonio city drivers? A. Yes, sir.

Q. As well as city drivers under other contracts in other places. Confining it to San Antonio, you have got two separate rosters, seniority rosters for layoff purposes. That is correct, is it not? A. Right, sir.

Q. And job bidding purposes. As long as that situation exists, if you got a road job and moved to Longview or

Dallas or some other place, Los Angeles or some other place where East Texas had road drivers domiciled, you would go to the bottom of the road drivers' seniority list, would you not? A. As it stands now, yes, sir.

Q. And that, of course, would mean that if there was any layoff of road drivers you would be laid off. A. I would be the first one.

Q. You would be the first one to be laid off? A. Yes, sir.

Q. Are you willing to take that sort of a chance? A. Now, you mean?

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[105] Q. Yes. A. I would have to think about it.

Q. You are not prepared to say that—I mean that is taking a terrible chance for a man with a wife and a number of children, isn't it? A. Yes, sir.

Q. To place your welfare and their welfare in jeopardy by taking the bottom of a seniority list or roster. That is correct, is it not? A. I would have taken it in 1970 when I did ask for a road job at that time.

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[117] QUESTIONS BY MR. PENSHORN:

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[129] Q. This Roadway employee that you heard make a statement at the contract negotiation meeting that preceded the current contract you are working under, did you know him very well? A. Well, I know most of the truck drivers.

Q. I am asking you if you knew this particular employee fairly well? A. He is not a personal friend of mine, if that is what you mean.

Q. But did you know his name at the time that he got up and spoke? Did you know who he was? A. Yes, I know who he is, but I mean I have got to think, you know.

Q. But my question is at the time that you saw him get up in this meeting and heard him speak, did you at that time know what his name was? A. Yes, sir.

Q. You did? [130] A. Yes, sir.

Q. About how long had you know him at that time? A. Maybe six or seven years.

Q. Had he been employed by Roadway during that period of time? A. Yes, sir.

Q. Had you seen him frequently in the last six or seven years that you and he both had worked for Roadway and East Texas? A. I see a lot of truck drivers every day.

Q. I am speaking of this particular man, Mr. Herrera. A. I see a lot of truck drivers. I can't pinpoint him. I can give that answer to Mr. Jim Heidelberg.

Q. You are telling me then that you can now find out his name by simply checking and put it in this deposition; is that what you are saying? A. Yes, sir.

Q. You can find out his name? A. Yes, sir.

Q. Will you do that for us? A. Yes, sir.

Q. Put it in the deposition? A. Yes, sir.

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[Deposition of Harold White]

[5] Q. And what is your present position? A. I'm director of safety for East Texas Motor Freight Lines.

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[26] Q. Have your duties changed any from 1970 to the present as director of safety? A. Basically it's more administrative. I still do a great deal of travelling, but now I still have administrative duties that was actually done by Mr. Huffman prior to me taking this job.

Q. Do you still have the opportunity to get out in the field and go to various terminals? A. Right, I sure do.

Q. Do you still on occasion drive with the drivers? A. Yes, I do.

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[27] Q. Do you have the ultimate authority to either approve or disapprove an application for a road driver position? A. This can be twofold, now. This can be—look,

when you ask this question, this takes into consideration there are more people involved in deciding about an applicant being hired. We discuss these matters with the district safety supervisor and even to the personnel director and if the man's qualifications does not meet at least the outline or the policy as set up, then we do not hire him.

Q. Well, what part, exactly, do you play in the decision, let's say, to not hire an applicant for a road driver position? A. I look at the policies as outlined. In other words, I know what the policies are, I look at it as outlined by the company and if this applicant does not meet these standards—he can have a bad safety record or he can have a number of traffic violations or he can be 20 years of age. These things we look at. Then I would tell the supervisor no, this man would not be—he could not be hired.

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[52] Q. Mr. White, turning to the city driver requirements of East Texas Motor Freight, could you briefly tell me the different requirements that a person or qualifications that a person must possess before he's eligible for hire as a city driver for East Texas? A. I don't have a lot of—I don't have a lot to do with this hiring of the city drivers; primarily, I do not. This is done more at the local level with the terminals and then this is passed on to the personnel manager for his checking out.

Q. And that would be whom? A. Sir?

Q. Who would that be, personnel manager? A. It would be Jesse Barnes. Personnel director would be Jesse Barnes and Mr. Bob Maiers.

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[53] Q. Why don't you basically tell me the differences between what a road driver does as opposed to a city driver? A. A road driver in his work, type of work, he works at various hours of the day and night over different terrain travelling from one city to the other with heavier loads at greater speed than you would here in the city. He has to

have considerable more knowledge of the DOT regulations or he does have more knowledge of the DOT regulations than most of your city people do. Your road drivers have to be trained in the manner of how to cope with all types of problems that occur on the road whereby here in the city if a driver breaks down in the city he automatically calls on his radio to ask the shop to send a mechanic. The road driver does not necessarily do this all the time.

In other words, he must make a determination at the time of a breakdown what the needs would be rather than just send a mechanic or a tractor all the way—this could be 200 miles down the road when he might have some simple thing that could be handled by himself by an explanation over the phone or maybe we have someone locally there that could take care of this.

Your city drivers depend primarily on the [54] supervision directly from the terminal, from the city dispatcher, city driver supervisor; whereby your road drivers do not, they assume a lot more responsibility. When they leave the terminal, depart the terminal, until they reach their destination, they do not have the supervision that the city drivers would have in this respect.

Q. As far as the actual driving——

MR. SEAY. Now, wait a minute. He hasn't about finished the difference between the road drivers and the city drivers. Don't cut him off, let him explain about the way they drive on the road and that sort of thing.

MR. HEIDELBERG: That's what I was going to ask him. Go ahead.

THE WITNESS: Your line drivers or your road drivers, they have to have a knowledge of the equipment that they are driving—such as the horsepower, the proper knowledge of your transmission, your clutch—due to the fact that they are travelling at higher rates of speed and they are pulling heavier loads normally than they are in the city. The traffic

on the highway, just one mishap in a split second, an improper decision can make a disaster for you.

[55] Secondly, travelling in all types of grades you can be travelling anywhere from four to five and eight per cent grades. You only make one mistake in that type of—missing your gears in your transmission. We have some terrain that we travel over that if a road driver is not an excellent driver, does not have perfect coordination, the ability to know the limits of his truck, and basically your city people do not know the limits in all of your city—I mean, in all of your equipment. Your road driver makes one mistake, he can either strip out a clutch or he can get it out of gear, he can be travelling off these grades and with the load pushing behind him down the grades and it doesn't take long to burn up your brakes and you've got them on fire. He can run over a vehicle ahead of him or he can turn one over in a curve or he can be transporting some hazardous materials on board and this could create a major disaster for any city or any community. It could wipe out—federal class A or B explosives, he could wipe out a city like that or a small town. Or he could have poisonous class A gas on board. These are the things, part of the things, that we look at in the road driver as far as his [56] responsibility versus the city man.

The city men are driving here in the city, they know they are going from the terminal over to this warehouse. They've got basically a simple route that they travel over there. They may run in fifth gear or sixth gear to get over there. Their speed is not as great as it is on the road. They are not carrying basically as heavy a load as your road drivers are carrying. They may have on a thousand pounds, they may have on ten thousand pounds, but when you are carrying a maximum capacity of 73,280 pounds, in many instances our equipment travels at full capacity, you have to have a road driver that's adjusted to this, that's trained in this respect for this type of driving.

We look at the monetary value of the equipment. Your road equipment is generally the type of equipment that we use runs, oh, up to $30,000. This does not include the trailers. And he can be carrying as much as a hundred thousand plus in cargo out there and a road driver is basically more familiar with the road—I mean, with the state laws of the various states that he travels in than your city people are.

There are many, many things that you can [57] elaborate on as to the difference between a city driver and a road driver. As I said earlier, we do have the moral obligation to put the very best qualified people on the public highways to make sure that we carry out our responsibilities to the federal and to the state regulatory bodies.

Q. (By Mr. Hiedelberg:) Let me ask you this, Mr. White: Is it not true that city drivers handle the same type of equipment on occasion that the road drivers do? A. Occasionally they do, but let's say this: That your city drivers generally have—we have assigned equipment for city drivers. Then when you put them in the road equipment out there, they do not take care of that piece of equipment like a road driver will.

In other words, I will use as an illustration between if you had an old model car versus a new Cadillac. Certainly you'd take better care of that Cadillac than you would that old car. I mean, that's just a hypothetical expression, but the only time that this road equipment is used is on an emergency basis; in other words, where you do not have anything else for a city driver to drive, but you have promised a customer that you are going to make this pick-up or you are going to make this delivery, and then you use that piece of [58] equipment to run that freight over there to his place of business or to make that pick-up. That's generally the only time that we do permit road equipment to be used. I have seen sometimes when we didn't do that.

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[65] Q. Okay. You are familiar with the fact that the no transfer policy has been modifid recently, are you? A. Yes.

Q. And that modification allows city drivers who are domiciled at terminals that also domicile road drivers to transfer to road driver positions, assuming that there is a vacancy? A. No, no, I do not understand it to be that way. The no transfer policy has been modified, as you have mentioned there, is—this company placed upon the bulletin boards a letter, a bulletin advising the city men that they could bid, of course, for line driving jobs in the Southern Conference. They were given a certain amount of time to do this and after that, well, then it was closed.

[66] In other words, so to speak, right now if a city man came up and said I want a road driving job and he was here at the time that this policy was put into effect, he did not bid on it, he did not indicate that he wanted to transfer to the road, then it's closed. In other words, our policy is still in tact as it had been.

Q. Okay. Which terminals did this modification affect? A. The Dallas, Longview, Memphis, Atlanta, San Angelo. I could be wrong, but I believe Shreveport, Louisiana.

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[69] THE WITNESS: Yes, we would have some.

Q. (By Mr. Heidelberg:) Okay. The question is, during the course of your employment with East Texas Motor Freight have you known of any Mexican-Americans who have worked as line drivers for East Texas Motor Freight? A. We have some Mexican-Americans that are line drivers for us out of the El Paso terminal, out of Los Angeles, and I believe that we have some in Phoenix.

Q. Do you know whether or not the Mexican-Americans that work in El Paso are in the Western Conference of the Teamsters? A. They can operate in the Western or the Eastern Division depending upon the position of the freight. In other words, if you have over—more freight on the [70]

east side and you do not have—you've exhausted your driving board, then the Conference is to permit a western driver to operate in the eastern half or likewise in the west.

MR. SEAY. Excuse me, now. Let me just clear that up for the record. You're talking about driving east or west from El Paso, but I understood it was Southern Conference if you go east. Is that what you mean, in the Southern Conference if you go east? I didn't think there was an Eastern Conference, the reason I brought that up.

MR. RISSETTO: There is, but it doesn't affect East Texas.

Q. (By Mr. Heidelberg:) You meant Southern Conference when you were talking about Eastern Conference? A. Right.

Q. Do you know the names of these Mexican-American line drivers in El Paso? A. To give you their full name, I'm not able at this present time, but we do have one that stands out in my mind more than others and that would be a driver by the name of Menajares that drives out of El Paso.

Q. And you don't remember when he was employed as a line driver for East Texas Motor Freight? A. The exact date, no. He's rather new as far [71] as seniority goes.

MR. HEIDELBERG: Can we stipulate that he was employed on 5-15-71?

MR. RISSETTO: Yes.

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[75] Q. Okay. Let me ask you this: Were you ever made aware of the fact that a few city drivers in San Antonio made applications with the terminal manager in San Antonio in 1970 for road driver, line driver positions? A. As far as me being aware from any part of the operation in San Antonio, I don't. I don't—I haven't been to San Antonio in I don't remember when and the only inkling that I would have of it would be just through hearsay.

Q. And you found that they did request [76] transfers up to this point in time? A. I have heard this, yes. I have heard of this, yes.

Q. And who told you that information? A. It would be through the officers of East Texas Motor Freight. The officers, when I mention the officers, there's a difference between a department head and an officer in the company. I heard that—oh, I just heard it in a conversation, but nothing just exactly what transpired in it. I couldn't give you a definite number.

Q. Well, can you remember? Excuse me, go ahead. Were you finished with your answer? A. Yes. I have been told that, now, that these employees are going on that these people have applied for a road driving job.

Q. Can you remember who with the company told you this? A. I'd hate to say I do and not be able to tell you the truth about it.

Q. Do you remember when this person told you, or persons? A. To give you an exact date on it or a month, I couldn't tell you that either. I remember through some of the conversations or with a part of our people [77] out there that they had applied for a position as a road driver, but to give you an exact date on it, I couldn't.

Q. Well, can you recall whether it was in 1972? A. I've heard this conversation in 1972, yes. I've heard that.

Q. Did you hear any conversations in 1971, pertaining to this matter? A. Not to my memory, I haven't.

MR. HEIDELBERG: I'll pass the witness.

CROSS EXAMINATION

BY MR. PENSHORN:

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Q. At the time that the line drivers became organized and represented by the Teamsters Union, did this occur on a system-wide basis of East Texas or just at the Dallas terminal? A. No, it did not occur on a system-wide basis

[78] due to the fact that the St. Louis, or let's say the Central States—this would include St. Louis and Chicago—was already organized. Then it developed here in Dallas, Texarkana, Little Rock—yeah, Little Rock. In this general area here that we were organized.

It came under the Southern Conference. The best I can remember that situation, I believe Dusty Miller was then associated with the Teamsters. We had a fellow that was head of this local by the name of Stewart, Jimmy Stewart, I believe, was president of the Local 745, but I believe this took into this area here at that time.

Q. So, then, what it consisted of was the line drivers, as far as you can recall, in Dallas, Texarkana, Little Rock and what else did you name? A. I didn't name any other area.

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[79] Q. Do you recall about how many terminals East Texas had in Texas in '51 where line drivers were domiciled? A. Dallas, Texarkana, and I believe that is it.

Q. That was it at that time? A. Right.

Q. And, then, at that time, of course, the contract between the Teamsters Union and East Texas only applied to line drivers working for East Texas? A. Yes, sir.

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[80] Q. All right, sir. Now, Mr. White, you have gone into considerable detail in response to Mr. Heidelberg's questions regarding the qualifications that East Texas Motor Freight has for potential line driver personnel. Did the Teamsters Local Union 657 in San Antonio have anything to do with the setting up and establishment of these qualifications for line drivers? A. Not to my knowledge.

Q. What about the Southern Conference of Teamsters, did they have anything at all to do with the company's establishment of these qualifications for line drivers? A. Not to my knowledge.

[81] Q. All right, sir. Does Teamsters Local 657 in San Antonio have any voice as to who you hire for a line driver of East Texas Motor Freight? A. No.

Q. What about the Southern Conference of Teamsters? A. No.

• • • • • • • • • • •

Q. But at any rate the union has no voice—— A. No.

Q. ——in the decision as to who you hire as a line driver?

• • • • • • • • • • •

[82] A. No, sir.

Q. To your knowledge did either Teamsters Local Union 657 or the Southern Conference of Teamsters have any voice in the establishment of the publication of the 1954 no transfer rule? A. No.

Q. Now, since 1965, can you tell me where you have had line drivers domiciled in the State of Texas? A. Since 1965 we've had them, let's see, in the City of Fort Worth, Dallas, Texarkana, Longview, Houston—with a correction on Houston, I'm not for sure when—if we had any drivers in—we—yeah, let's see. There was drivers that was transferred out of Houston, I believe, in about the year '65, out of Houston, Texas.

Now, let me ask this question: Is this to take into consideration the purchase of the Copper State?

Q. Yes, sir. A. All right.

Q. Any place that you have line drivers domiciled since July of 1965. A. All right. We've had them in San Angelo; Pecos, Texas; El Paso; and I believe we had one in San Antonio.

Q. Any place else? [83] A. No, no, I can't think of any other cities that we would have.

Q. All right. How long, approximately, did you have a line driver domiciled in San Antonio? A. I couldn't tell you how long we've had him there due to the fact that I don't know what Copper States or VCS Freight Lines did prior to the purchase by East Texas Motor Freight Lines. After East Texas came to the scene and we took over management of Copper State Freight Lines it was found to be not in the—the economics, as far as that part goes, and

also the operating part of the company did not really fit into the part of East Texas Motor Freight as trying to be a transcontinental carrier. We only had one driver there and we—and we transferred—we had a change of operations that permitted us to take this one driver and move him into, say, San Angelo and we could turn San Antonio out of San Angelo for the simple reason that San Antonio was a back hall type of operation for East Texas, it was not a hit hall type of operation.

And as far as the economics of the situation, this is why this change of operations came about. Copper State at that time had so many different types of changes that was in existence at that time, it was almost impossible for East Texas to operate without [84] violating some part of another contract or some other local union; so, therefore, we had to make these changes.

Q. Well, it's correct, then, is it not, that the one line driver that you had stationed or domiciled in San Antonio was a man and a run that you acquired in the purchase of Valley Copper States? A. That is correct.

• • • • • • • • • • •

[86] Q. All right, sir. So would it be correct, then, to say that the present time you only have line drivers domiciled in Dallas, Longview, San Angelo, Pecos and El Paso? A. That's correct.

Q. And that's all of them? A. That's right.

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[Deposition of Ed A. Asbury]

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[13] Q. After your tenure in this capacity, what was your next job responsibility at East Texas Motor Freight? A. Terminal manager in San Antonio.

Q. When did you become terminal manager? [14] A. Two years ago this month.

Q. Do you recall the exact date? A. December 8.
Q. 1970? A. Yes.

• • • • • • • • • •

[18] Q. You were in the corporate headquarters for a considerable period of time. Do you know which individual with the company right now is responsible for hiring line drivers? A. I really don't.

Q. Who was responsible for that when you were up there? A. There would probably be two or three people involved at the terminal which [illegible] would be domiciled. The terminal manager was involved. They had safety supervisors from the corporate office that would be in there checking these drivers out for qualifications, and then I am sure the personnel department would check their records, their background, so it would be three or four people involved.

Q. Can you mention the names of those persons at the corporate office that would be involved? A. Well, in the personnel department would be Robert Meyer. His department would probably be the one to check out the background of the applicants. The safety supervisor worked under the direction of R. W. Huffman who was director of safety at the time I was there. Then the terminal manager at the local terminal level would be concerned.

• • • • • • • • • •

[28] Q. Let me ask you this, Mr. Asbury: If a city driver for East Texas Motor Freight here in San Antonio wanted to become a road driver, what would he have to do? A. He could approach that probably from two or three angles. He could go tell his terminal manager or he could write a letter or he could contact somebody from the general office.

Q. So if he contacted his terminal manager, that would be the procedure that he would follow? A. Very possibly that would be. That would probably be his first contact.

• • • • • • • • • •

[30] Q. Let me ask you this: Do you know of any city drivers that have applied or made application for transfer to road driver positions? A. I have heard about those.

Q. Which individuals are those, do you know? [31] A. Modesto Herrera, Jesse Rodriguez and Sadrach Perez who is no longer with us.

• • • • • • • • • •

Q. If a line driver—excuse me. If a city driver were to come to you at the present time and file a request, a written request similar to the requests that have been filed by these three individuals, would you transfer them to Dallas? A. Yes.

[32] Q. Why would you do that? A. In the first place, again, it is not my decision to determine whether he could transfer from one terminal to another or not. I have no way of knowing the needs at another terminal.

Q. So it just makes good business sense to communicate this information in these applications to corporate headquarters, is that right? A. Right.

• • • • • • • • • •

[34] Q. During your tenure as systems manager with ETMF, did you ever know of any Negro who was a line driver, employed as a line driver by East Texas Motor Freight? A. I don't recall seeing any.

Q. And that applies up to the present? A. Yes.

• • • • • • • • • •

[35] Q. Do you know of any Mexican-Americans that have driven over the road for East Texas Motor Freight? A. I don't have—I don't recall seeing any.

• • • • • • • • • •

[Deposition of Ezra A. Beierle]

• • • • • • • • • •

[15] Q. I assum that you were promoted from your present position to—excuse me—from your position in 1965 to another position? A. Yes.

Q. What was that? A. Assistant terminal manager.

Q. Is that the same position you occupy at the present? A. Yes.

• • • • • • • • • •

[39] Q. I see. Besides Modesto Herrera, were there any other individuals that made applications that you know of now? A. That I know of now?

Q. Yes, sir. A. Yes.

Q. And who are those individuals? A. Jesse Rodriguez, Sadrach Perez, Trinidad Gomez, Andrew Hernandez.

Q. When did you find out that Jesse Rodriguez had filed an application to go on the road? [40] A. I don't know what date it was. It was right after this suit was filed that I was advised of it.

Q. That would be sometime around October of 1971? A. I would imagine.

Q. How did you find out about it? Did somebody tell you, or did you read about it, or what? A. I asked Mr. Asbury what—why this was being filed, and he said some of the boys had signed some letters applying for it, and I asked him at that time who they were.

Q. Why did you ask him that? A. I was curious to know who they were, but I was not aware of it until then.

Q. And he told you that all the individuals whose names you mentioned had filled out these applications? A. Yes.

Q. Including Andrew Hernandez? A. Yes.

• • • • • • • • • •

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

(Caption Omitted in Printing)

East Texas Motor Freight Lines, Inc.'s Answers to Plaintiffs' First Set of Interrogatories

(Filed March 27, 1972)

• • • • • • • • • •

15. • • • Exhibit 2 of these answers contains a list of local unions that are signatory to collective bargaining agreements with ETMF and have traditionally served as a referral source of job applicants. Additionally Exhibit 2 contains a list of those organizations from whom the company has requested employment referrals. Due to the acquisition of Valley Copperstate System and the unavailability of old records, this question cannot be answered in its entirety. However, the attached shows referral sources which have been used and for which we do have records.

• • • • • • • • • •

Total Texas employees:

Blacks	193
Spanish Americans	144
Other	7
Anglo	1213
Total	1557

31.	a Number Spanish Line Drivers—	3
	b. Number Negro Line Drivers—	0
	c. Number Anglo Line Drivers—	180
	d. Number Spanish City Drivers—	102
	e. Number Negro City Drivers—	95

f. Number Anglo City Drivers— 347

Total: Southern Conference 2,188

• • • • • • • • • •

48. Between July 2, 1965 and February 1972 company policy precluded inter-classification transfer between Road driver and other classifications. By virtue of the applicable collective bargaining agreements, employees classified as city-drivers, checkers, switchers, hostlers, forklift operators, riggers and dockmen periodically bid the aforementioned jobs on the basis of terminal seniority. In light of this procedure it is impossible, from a practicable standpoint to list each of the myriad of individual transfers within this group of classifications. The above jobs carry identical wage rates with the exception of dockmen, which classification pays a rate that is twelve cents less than the remainder. There are no advancements or promotions between classifications.

• • • • • • • • • •

62. (a) Yes, with the exception of 35 drivers who run West out of El Paso Texas

(b) Article 5, Sections 1 through 7; Article 40, Section 3; Article 42, Section 2; and Article 6, Sections 1 and 2.

(c) NEGOTIATING COMMITTEE FOR THE EMPLOYEES:

NATIONAL OVER-THE-ROAD AND CITY CARTAGE POLICY AND NEGOTIATING COMMITTEE

Frank E. Fitzsimmons (*Chairman*)

Murray W. Miller
Joseph Trerobela
William Presser
William McCarthy
Roy L. Williams
M. Ralph Dixon
Robert Flynn
A. J. Hardy
Elvin E. Hughes
Weldon L. Mathis
Verne Milton
Joseph W. Morgan
Walter Shea
B. M. Waggoner
Al Weiss

SOUTHERN CONFERENCE OF TEAMSTERS

Murray W. Miller, Chairman
W. C. Smith
Howard Jones
J. W. Morgan
M. R. Dixon
C. D. Winters
G. Sam Webb
C. H. Augustine
Luther A. Watson
Albert J. Johnson
Odell Smith
W. L. Piland
W. M. Hays

• • • • • • • • • •

(e) Party to National Over-the-Road and Southern Conference Supplemental Agreement.

(f) ETMF was advised that the Southern Conference held the Local's Powers of Attorney for the Supplemental Agreement.

Local 745
General Drivers Warehousemen & Helpers
1007 Jonelle St., Dallas, Texas 75217

Local 941
Truck Drivers, Chauffeurs & Warehousemen & Helpers
6944 Commerce Ave.
El Paso, Texas 79915

Local 568
Truck Drivers & Helpers, Shreveport, La.
920 Grimmett Drive
Shreveport, La. 71107

Local 47
Chauffeurs Teamsters & Helpers
3801 Westridge Avenue
Ft. Worth, Tex. 76116

PLAINTIFF'S EXHIBIT 1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SAN ANTONIO DISTRICT OFFICE
115 BROADWAY, ROOM 200
SAN ANTONIO, TEXAS

73-2801

District Director's Findings of Fact

Case YSA 2 030

Charge TAUL 0353

JESSE RODRIGUEZ, *Charging Party*

VS.

EAST TEXAS MOTOR FREIGHT, SAN ANTONIO, TEXAS,
Respondent

Date of alleged violation: August 19, 1970 Continuing.

Date of filing charge: August 20, 1970. June 9, 1971 (Amended).

Date of service charge: March 19, 1971. June 11, 1971 (Amended).

1. The Charging Party alleges in his original and amended charges that Respondent has violated and continues to violate Title VII of the Civil Rights Act of 1964, by discriminatorily excluding Spanish Surnamed American and Negro employees from Road Driver Positions.

2. The Respondent is a common carrier engaged in local and long distance trucking, an actively affecting commerce.

3. The Respondent has nation-wide operations and employs over 25 persons.

4. The Charging Party is a 28 year-old Spanish Surnamed American who was employed as a City Driver by the Respondent on September 21, 1965, in the San Antonio Terminal and is presently working for Respondent as a City Casual (on lay-off status). The Charging Party is a member of the International Brotherhood of Teamsters.

5. The Respondent's San Antonio Terminal employees are covered by this National Master Freight Agreement and the Southern Conference Area Local Freight Forwarding, Pickup and Delivery Supplemental Agreement; the Southern Conference Area encompasses Texas, Arkansas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Mississippi, Tennessee and the city of Asheville, North Carolina.

6. The Charging Party in his affidavit dated March 21, 1971, and in a statement dated June 9, 1971 stated: he had spoken to the Assistant Terminal Manager in February, 1970 requesting that he be considered for a position as a Road Driver and that he had also made this request known to the Terminal Manager (who has since been replaced) and to the Local Union President and Job Steward, none of whom took any "positive action" on his behalf.

7. The Charging Party further stated that on August 21, 1970, after filing a charge of discrimination under Title VII, he was called into the Terminal Manager's Office and presented with a typed letter, specifying his request for a Road Position, which he signed.

8. The Respondent's records reveal a type written letter dated 8-21-70, signed by the Charging Party and addressed to the San Antonio Terminal Manager stating: This is to advise that "I, (Charging Party) employed as a City Pick-Up and Delivery Driver, San Antonio Terminal, am applying for a Road or Line Driver Job on this date. . . . I fully realize that if I am accepted as a Road or Line

Driver, I will lose my city seniority from the date of my employment. . ."

9. The Respondent's San Antonio Terminal records reveal identical letters in the personnel files of three other Spanish Surnamed city drivers whose hire dates as city drivers are 3-5-52, 11-16-59 and 5-3-65.

10. The Respondent's San Antonio Terminal Manager stated to a Commission Representative on March 19, 1971, and July 14, 1971, that:

a) There have been no Road Drivers domiciled in San Antonio.

b) Road Drivers come into San Antonio from San Anglo, Planview, Shreveport.

c) The Respondent has had a policy, for at least 10 years, of no transfers between city and road.

d) To his knowledge, there have never been any Spanish Surnamed American or Negro Road Drivers employed in the Respondent's Southern Conference Area.

e) He had no personal knowledge of the Charging Party's or any other Spanish Surnamed American requesting a transfer to a Road Job.

f) Bid's for Road Jobs are not posted in the San Antonio Terminal.

g) A City Driver is paid $4.85 per hr. while Road Drivers are paid 13.175 cents per mile.

11. The Respondent's Director of Training and Personnel in Dallas General Offices stated on June 23, 1971, that applications for all employees are taken locally and final review and approval on all hires are done centrally in the Respondent's Dallas General Offices.

12. The same official stated on June 4, 1971 that the Dallas General Office personnel file on the Charging Party did not contain a copy of his August 21, 1970 letter applying for a Road Position.

13. The Respondent's Director of Training and Personnel further stated on June 18, 1971, that the Respondent has a no transfer policy on transfers between City and Road Jobs for the following reasons.

a) Due to the existence of separate supplemental union contracts covering City and Road Drivers and the existence of two separate seniority rosters for City (by terminal) and Road Drivers (area modified system), the City Driver, in transfering would lose his accumulated city seniority and would go to the bottom of the modified Road Seniority Roster. Since bids and call outs are based on seniority, the City Driver who transferred would have a difficult time making a living.

b) The Respondent believes a City Driver would have a difficult time adapting to a Road Position because it requires that he be away from home.

14. The same official stated on 7-16-71 that, under company policy, a City Driver would have to resign his City Position and apply for a Road Position as a new employee.

15. The Respondent's Seniority Roster for San Antonio Terminal for 3-17-71 shows the following:

Anglo City Drivers	6
Spanish Surnamed American Drivers	38
Negro Drivers	14
Total City Drivers	58

16. The Respondent's Assistant Director for personnel provided on July 15, 1971, and July 23, 1971, the following racial and ethnic information for the Respondent's two largest Terminals in the Southern Conference:

Dallas:	Anglo City Drivers	107
	Spanish Surnamed American Drivers	11
	Negro Drivers	5
	Total City Drivers	123

Houston:	Anglo City Drivers	47
	Spanish Surnamed American Drivers	39
	Negro Drivers	68
	Total City Drivers	154

17. The Respondent's modified Road Seniority list for 5-18-71 indicates that there are 415 Road Drivers employed by Respondent in the Southern Conference Area, all of these are Anglo. (A Spanish Surnamed American Line Driver was hired 5-15-71 according to Director of Personnel and Training but his name does not appear yet on Printout Roster).

18. The Respondent's Assistant Director for Personnel stated in a letter signed on 8-23-71 that records of departed employees are destroyed after 3 years and that a verbal survey of the Respondent's various Terminals in the Southern Conference Area was "unable to verify where we have had Spanish American individuals employed as Line Drivers."

19. The Vice President of a nation-wide common carrier (similar in operations to the Respondent and under the

same National Master Freight Contract stated in a letter of 8-27-71, that in some cities outside the Southern Conference, there has never been a "no transfer rule" affecting the employees if his company and that City and Road Drivers of his company may transfer back and forth with seniority at the time when bids are posted, generally once a year.

20. I find that, prior to the hiring of a Spanish Surnamed American Road Driver on May 15, 1971, the Respondent had employed Spanish Surnamed American and Negro Persons only as City Drivers in the Southern Conference Area and had never employed Spanish Surnamed Americans or Negroes as Road Drivers in the Southern Conference Area.

21. I find that the Respondent's policy of no-transfer and the resulting loss of accumulated seniority (if a City Driver does resign his position and apply for a Road Job as a new employee) has the effect of perpetuating past discriminatory practices by locking Spanish Surnamed Americans and Negroes into the less desirable City Driver positions to which they were initially relegated by race and national origin.

Date: September 9, 1971.

/s/ GUS GONZALES
Gus Gonzales
District Director
San Antonio Office

PLAINTIFF'S EXHIBIT 5

73-2801

August 21, 1970

To:

W. N. Sager, *Terminal Manager*
ETMF Freight System
139 Gembler Road
San Antonio, Texas

This is to advise that I, Mr. Jesus Rodruiquez, Jr., employed as a City Pick-Up and Delivery Driver, San Antonio Terminal, am applying for a road or line driver, job on this date, with the ETMF Freight System.

I fully realize that if I am accepted as a road of line driver, I will loose my city seniority from the date of my employment, which was September 21, 1965.

I feel like my city driving record will more than speak for itself and that I am fully qualified to fulfill the duties of a road or line driver for the ETMF Freight System.

Yours very truly,

Jesus Rodriquez, Jr.
ETMF Freight System
San Antonio, Texas

PLAINTIFF'S EXHIBIT 6

73-2801

August 21, 1970

To:

W. N. Sager, *Terminal Manager*
ETMF Freight System
139 Gembler Road
San Antonio, Texas

This is to advise that I, Mr. Sadrach G. Perez, employed as a City Pick-Up and Delivery Driver, San Antonio Terminal, am applying for a road or line driver job on this date, with the ETMF Freight System.

I fully realize that if I am accepted as a road or line driver, I will loose my city seniority from the date of my employment, which was November 16, 1959.

I feel like my city driving record will more than speak for itself and that I am fully qualified to fulfill the duties of a road or line driver for the ETMF Freight System.

Yours very truly,

/s/ Sadrach G. Perez
Sadrach G. Perez
ETMF Freight System
San Antonio, Texas

PLAINTIFF'S EXHIBIT 7

73-2801

August 21, 1970

To:

W. N. Sager, *Terminal Manager*
ETMF Freight System
139 Gembler Road
San Antonio, Texas

This is to advise that I, Mr. Modesto Herrera, employed as a City Pick-Up and Delivery Driver, San Antonio Terminal, am applying for a road or line driver on this date, with the ETMF Freight System.

I fully realize that if I am accepted as a road or line driver I will loose my city seniority from the date of my employment, which was May 3, 1965.

I feel like my city driving record will more than speak for itself and that I am fully qualified to fulfill the duties of a road or line driver for the ETMF Freight System.

Yours very truly,

/s/ Modesto Herrera
Modesto Herrera
ETMF Freight System
San Antonio, Texas

PLAINTIFF'S EXHIBIT 8

73-2801

1 September 1970

To:

W. N. Sager, *Terminal Manager*
ETMF Freight System
139 Gembler Road
San Antonio, Texas

This is to advise that I, Mr. Trinidad Gomez, employed as a City Pick-Up and Delivery Driver, San Antonio, Terminal am applying for a road or line driver on this date, with the ETM Freight System.

I fully realize that if I am accepted as a road or line driver I will loose my city seniority from the date of my employment, which was 5 March 1952.

Yours very truly,

/s/ Trinidad Gomez
Trinidad Gomez
ETMF Freight System
San Antonio, Texas

December 1, 1970

Mr. Frank Fitzsimmons, *President*
Teamsters National Office
25 Louisiana Avenue NW
Washington, D.C. 20001

PLAINTIFF'S EXHIBIT 9

Dear Mr. Fitzsimmons:

We, the following dues paying members of Local 657 of the Teamsters Union in San Antonio, Texas, hereby request the national office to send an objective monitor to monitor the Teamster elections in December.

We want to say that we are Teamsters and we are proud of our union and that we wish to remain in the union, but we feel that there are many irregularities that have not been explained to us, so; therefore, we have filed for the offices of:

Vice President ..... Modesto (Moe) Herrera
Secretary-Treasurer .. Artemio (Art) Valdez
Recording Secretary .. Sadrach Perez
Trustee ..... Tom Salinas
Trustee ..... Frank Morales
Trustee ..... Senovio Chavez

We want this monitor to conduct the election according to the constitution of the union and federal laws. We do not want any publicity. We want this fight within our union not to get into the newspapers, because we feel this will hurt the union movement generally. This is what we do not want.

One of the things that we are unhappy with is that all of the long haul drivers who make real good money are Anglo and not Mexican Americans or Blacks. We feel that the leadership of the local is not giving the Mexican Americans in the union a fair break. All of the organizers in the union and all of the staff are Anglo in our local. We feel this should be corrected regardless of whether we win or not. If the leadership is not changed, we feel that more and more Mexican Americans will be leaving the Teamsters' Union or look to other unions for leadership. For example, because of the unresponsive leadership in our union several hundred Teamsters have withdrawn from the union in Crystal City, Texas. We want our local to be responsive to the needs and desires of all of the membership and only by conducting a clean and fair election can we be satisfied that the members want the leadership that

will be elected, and this is why it is urgent that the monitor we request be sent.

Very truly yours,

Sadrach Perez, Candidate for
Recording Secretary and Coordinator
of this group
7906 Niagara, San Antonio, Texas
922-0661

Modesto Herrera
615 Benrus, San Antonio, Texas

Artemio Valdez

Tom Salines
519 Delmar, San Antonio, Texas

Frank Morales
519 Yukon, San Antonio, Texas

Senovio Chavez
526 East Sayers Street,
San Antonio, Texas

PLAINTIFF'S EXHIBIT 10

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS · WAREHOUSEMEN & HELPERS
OF AMERICA
AND PRINCIPLE OFFICE, 2301 TRUMBULL AVENUE
DETROIT, MICHIGAN 43216

December 4, 1970

Mr. Sadrach Perez
7906 Niagara
San Antonio, Texas 78224
Dear Brother Perez:

This will acknowledge receipt of the communication you forwarded to this office signed by yourself and Messrs. Herrera, Valdez, Salinas, Morales and Chavez, dated December 1, 1970, concerning job discrimination to Mexican Americans and Blacks, IBT Local Union No. 657 and its upcoming election of officers.

Please be advised that we have forwarded a copy of your correspondence to Mr. Murray W. Miller, Vice President and Area Director of the Southern Conference of Teamsters in Dallas, Texas, for his attention to the matter.

Fraternally yours,

/s/ FRANK E. FITZSIMMONS
Frank E. Fitzsimmons
General Vice President

PLAINTIFF'S EXHIBIT 15

Southern Conference Area

OVER-THE-ROAD MOTOR FREIGHT
SUPPLEMENTAL AGREEMENT

Covering Drivers Employed By

PRIVATE, COMMON AND
CONTRACT CARRIERS

For the Period of:

April 1, 1970 to June 30, 1973

In the Territory of:

ALABAMA, FLORIDA, GEORGIA, MISSISSIPPI,
TENNESSEE, ARKANSAS, LOUISIANA,
OKLAHOMA AND TEXAS

ARTICLE 40.

SCOPE OF AGREEMENT

Section 1.

The execution of this Supplemental Agrement, herein referred to as "Agreement," on the part of the Employer shall cover all over-the-road operations of the Employer in said described area.

• • • • • • • • • •

Section 3. City or Local Work

Local dock work or city pickup and delivery service is not subject to the terms and conditions of this Agreement, but is subject to a separate Agreement entered into between the Employer and the involved Local Union. Employees subject to this Agreement shall not be permitted to perform dock work or city pickup and delivery service where the performance of such work conflicts with the Local City Pickup and Delivery Agreement between the Employer and a Local Union affiliated with the I.B.T.C.W. & H. of A. and except as specifically permitted herein.

Section 4. Pickup and Delivery Limitations

The operations, other than those of a certificated irregular carrier, shall be dock to dock and there shall be no pickups or deliveries permitted at either end of the run except that one pickup of a solid load at point of origin and one delivery of a solid load at destination shall be allowed, provided that the driver receives the applicable hourly rate of pay for time lost through delivery. Pickup or delivery of a trailer at an interline terminal, if located on general route, shall be allowed.

Section 5.

Neither pickup at origin nor delivery at destination shall be permitted where a driver or drivers, or driver and

helper have driven four hundred (400) miles, or on any run which cannot be completed in ten (10) consecutive hours from point of origin to final destination, including such pickup and delivery.

• • • • • • • • • •

ARTICLE 42.

SENIORITY

Section 1.

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a three (3) year layoff. In the event of a layoff, an employee so laid off shall be given two (2) weeks notice of recall by certified mail to his last known home address. In the event the employee fails to make himself available for at at the end of said two (2) weeks, he shall lose all seniority rights under this Agreement. Employees shall give the Employer one (1) week notice of intent to return to work. A list of employees arranged in the order of their seniority, shall be posted in a conspicuous place at their place of employment.

Any protest to the seniority list must be made in writing, with a copy to the Employer and the Union, within thirty (30) days from the date of posting of the seniority list. In the event no protest is made the seniority list, as posted, shall be considered correct and final.

Controversies regarding seniority shall be settled by the Employer and the Union. Failing a settlement by these parties, the controversy shall be processed under the Grievance Procedure set out in Articles 43 and 44 of this Agreement.

Section 2.

(a) Terminal seniority as measured by length of service at such terminal shall prevail except in those

instances where a majority of the employees of an Employer in the Southern Conference Area agree by vote to the contrary.

(b) Within sixty (60) days after the date of the signing of this Agreement any request of any employees of an Employer for seniority other than terminal seniority shall be made to the Local Union involved, and if such request is made during this period all Local Unions involved shall be notified and a vote shall be taken of all employees involved within one hundred twenty (120) days of the date of the signing of this Agreement and a majority vote shall be final and binding. After these time limits no further change from terminal seniority will be made during the life of this Agreement, except as otherwise provided for in this Agreement.

(c) For employees of certain Employers who have operations in both the former Southeast and Southwest Areas, who now have modified and/or terminal seniority, notwithstanding (a) and (b) above, within one hundred and twenty (120) days after the date of the signing of this Agreement, a vote will be taken of all such employees to determine whether terminal or modified system seniority shall apply to these employees in the Southern Conference Area and a majority vote shall be final and binding.

(d) Where there is presently in effect a type of seniority other than terminal or modified system, within sixty (60) days after the date of the signing of this Agreement any request of any employees of an Employer for terminal or modified system shall be made to the Local Union involved,

and if such request is made during this period all Local Unions involved shall be notified and a vote shall be taken of all employees involved within one hundred twenty (120) days after the date of the signing of this Agreement, and a majority vote shall be final and binding. After these time limitations no further change from present seniority will be made during the life of this Agreement, except as otherwise provided for in this Agreement.

Section 3. Reduction in Force

When it becomes necessary to reduce the working force, the last employee hired shall be laid off first and when the force is again increased, the employees are to be returned to work in the reverse order in which they were laid off.

Section 4. Vacancies and New Runs

(a) Vacancies, new runs and new positions, are subject to seniority and shall be posted for bid, except as hereinafter provided. The employee with the highest seniority who bids shall receive such vacancy, new run, or new position. The posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid. Bids shall remain open for a period of seven (7) days, and runs shall be awarded within seven (7) days thereafter. Seniority shall not govern assignment of equipment.

(b) The bulletining of regular runs shall include the days and approximate time of departure, destination, the routes, type of run and number of days each week (approximate time of departure will not apply at agreed to relay points).

If there is no load for the bid driver at his approximate departure time, the driver will be called at least two (2) hours prior to his approximate departure time and either cancelled or delayed subject to call. If cancelled, the driver will be placed on the extra board with his seniority. If delayed, he will be guaranteed his bid run during his bid day.

All runs shall be posted for bid at least once each twelve (12) months, including peddle runs. Minimum guarantee runs (those paid on hourly basis) shall not be posted for bid, but will be run off the extra board in accordance with their seniority as provided by this Agreement. The number of regular runs to be posted for bid shall be determined by taking 75% of the number of runs operating between two (2) designated points, for a period of six (6) months.

(c) Extra employees at an away from home terminal shall be dispatched back to their home terminal in the same order as dispatched from home terminal and may be dispatched ahead of regular employees, provided such dispatch does not result in cancellation of regular runs back to the home terminal. An extra employee at a point away from home terminal shall be entitled to the first extra trip to his home terminal.

At Point of First Destination

If no load is available to extra employee's home terminal he may be dispatched to another point after all domiciled employees are dispatched.

At Point of Second Destination

If no load is available to extra employee's home terminal he may not be forced to go to any point away from his

home terminal, but may be dispatched to any point if from such third destination point he will be dispatched to his home terminal in one tour of duty.

Either a regular or extra employee may be dispatched on VIA dispatch without regard to extra employees at VIA terminals. Extra employees may be dispatched VIA his home terminal if that dispatch does not violate the above paragraph and does not cancel a regular employee at that terminal. The Employer and the Local Union may establish dispatch rules, these rules will be in writing and signed by both parties. These dispatch rules must be submitted for approval to the appropriate Grievance Committee within ninety (90) days from the date of the signing of this Agreement. Failure of either party to agree to establish dispatch rules the following shall apply: Extra employees upon arrival at home terminal may pick or choose his next destination and hold for same in his seniority order as long as there are drivers available to perform the work.

In the event the dispatch of an extra employee is changed enroute he shall be paid the applicable rate for the type of run he actually performed, subject to the eight (8) hour guarantee.

In using the terms "broken" or "changed" dispatch enroute it is meant that this is done at a terminal or stop between points of origin and destination. Any dispatch given at point of destination is a second run and shall be paid as such in accordance with the provisions set forth in this Agreement.

Wreck of equipment or incapacity of employee, or if dispatch is not completed because of a strike of a Teamsters' Union, shall not be considered a broken dispatch.

An employee is not eligible for dispatch until his elapsed time in a terminal is equal to the minimum running time

plus a statutory rest period. For example: An employee dispatched at 12:00 noon from his home terminal on a run that requires eight (8) hours running time will not be eligible for dispatch at the foreign terminal until sixteen (16) hours past the 12:00 noon original dispatch, or 4:00 a.m. the following morning.

The bid and/or dispatch day shall be the calendar day, midnight to midnight, unless otherwise mutually agreed to by the Local Union and Employer involved. Should there be a dispute as to the mutual agreement of the bid and/or calendar day between the Employer and the Local Union that dispute shall be subject to the grievance procedure. Such agreement must be in writing and signed by both parties with a copy filed with the proper Grievance Committee as provided for in this Agreement. The Local Union and Employer shall arrive at an agreement on the minimum running time and shall file said agreement with the Grievance Committee.

(d) A regular employee at an away-from-home terminal shall be dispatched out in the same order as was dispatched from home terminal. A regular run may be cancelled at the home terminal in order to get an extra employee back to his home terminal for a weekend or holiday, or at any time with empty equipment. If the dispatch of a regular employee is broken, he will be paid his original dispatch, plus miles driven off route and work performed off route.

A road employee may be required to drop a trailer at an interline terminal at point of destination of his run when the terminal of his own Employer is closed.

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Article 51.

Mileage and Hourly Rates

Section 1.

(a) The mileage rates per mile shall be as follows:

	4-1-70	7-1-71	7-1-72
Single Axle Units	12.925	13.925	14.675
Tandem Axle Units	13.175	14.175	14.925
Tandex 5-Axle Units	13.300	14.300	15.050
Double Bottom Units, Jeeps, or a combination of vehicles or Units not to exceed two trailers	14.325	15.325	16.075
Two-Man Rate	15.085	16.085	16.835
Single-Man Rate	7.5425	8.0425	8.4175
Double Bottoms Not exceeding two 30' Trailers Two-Man Rate	15.835	16.835	17.585
Single-Man Rate	7.9175	8.4175	8.7925

(b) Drivers dispatched with double bottom (not including two forty-foot trailers) shall receive double bottom rate to final destination, even though a box or boxes are dropped enroute. Drivers starting out with single operation but becoming a double operation enroute shall receive a double operation rate to destination point from pickup of second trailer

(c) The hourly rates of pay for employees shall be as follows:

4-1-70	7-1-70	1-1-71	7-1-71
$4.22	$4.37	$4.77	$5.02
1-1-72	7-1-72	1-1-73	
$5.27	$5.52	$5.72	

(d) The hourly rate of pay for Peddle Run employees shall be as follows:

Southwest

4-1-70	7-1-70	1-1-71	7-1-71
$4.30	$4.45	$4.85	$5.10
1-1-72	7-1-72	1-1-73	
$5.35	$5.60	$5.80	

Southeast

4-1-70	7-1-70	1-1-71	7-1-71
$4.28	$4.43	$4.83	$5.08
1-1-72	7-1-72	1-173	
$5.33	$5.60	$5.80	

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ARTICLE 54.

TWO-MAN OPERATION

The following rates of pay shall prevail for the two-man operation:

Section 1.

(a) Two-Man Rate per Mile

Double Bottoms Not Exceeding Two 30' Trailers

April 1, 1970	15.085	15.835
July 1, 1971	16.085	16.835
July 1, 1972	16.835	17.585

(b) Single Man Rate

April 1, 1970	7.5425	7.9175
July 1, 1971	8.0425	8.4175
July 1, 1971	8.4175	8.7925

Section 2. Hourly Rates of Pay

4-1-70	7-1-70	1-1-71	7-1-71
$4.22	$4.37	$4.77	$5.02
1-1-72	7-1-72	1-1-73	
$5.27	$5.52	$5.72	

The rate of pay for pickup and delivery or delay time shall be as follows: Pickup and delivery shall be paid for at the full hourly rate for each man. Both drivers on two-man operat[illegible] shall receive the same rate of pay when delayed on pickup and delivery. Full allowance for breakdown, layover, impassable highway and deadheading time and for lodging, etc., as specified elsewhere in this Agreement, shall apply for both men.

There shall be no allowance for time spent taking fuel and oil enroute between terminals.

Flagrant abuse of free time shall constitute a violation of this Section, and shall be subject to the grievance machinery of Article 44.

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PLAINTIFF'S EXHIBIT 16

NATIONAL MASTER FREIGHT AGREEMENT

Covering

OVER-THE-ROAD

and

LOCAL CARTAGE EMPLOYEES OF PRIVATE COMMON, CONTRACT AND LOCAL CARTAGE CARRIERS

For the Period of

APRIL 1, 1970

Through

JUNE 30, 1973

ARTICLE 5.

Section 1. Seniority Rights

Seniority rights for employees shall prevail under this Agreement and all Agreements supplemental hereto. Seniority shall only be broken by discharge, voluntary quit, more than a three (3) year lay-off, or for such greater period than three (3) years as a change of operations committee may direct during the third year as provided in Article 8(e) herein, or as provided in any applicable provisions of the Supplemental Agreements. The extent to which seniority shall be applied as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements.

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Section 6.

The Union shall be entitled to a seniority list each six months upon request. The Employer shall post a seniority list at least once every twelve (12) months. Employees shall make written complaint to the Company and Union within 30 days after such posting. Any such complaint not settled between the Company and Union shall be submitted to the grievance procedure.

• • • • • • • • • •

ARTICLE 38.

NON-DISCRIMINATION

The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any

way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

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Southern Conference Area

Local Freight Forwarding

Pickup & Delivery

SUPPLEMENTAL AGREEMENT

Covering Employees of

PRIVATE. COMMON. CONTRACT

and

LOCAL CARTAGE CARRIERS

For the Period of

April 1, 1970 to June 30, 1973

Covering the Operations in the Territory of:

ARKANSAS, LOUISIANA, OKLAHOMA AND TEXAS, ALABAMA, FLORIDA, GEORGIA, MISSISSIPPI, TENNESSEE, and the City of ASHEVILLE, N. C.

ARTICLE 40.

Section 1. Scope of Agreement

(a) The execution of this Agreement on the part of the Employer shall cover all the Local Freight Forwarding Pickup and Delivery operations of the Employer in said described area, excluding El Paso, Texas.

(b) If the Employer begins operating a terminal in a city where there is now no terminal, the Employer agrees that as soon as the Union shows the Employer authorizations signed by the majority of the City Pickup and Delivery and Dockmen employees, this Agreement shall automatically become effective.

Section 2. Employees Covered

Employees covered by this Agrement shall be construed to mean any Driver operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated for transportation purposes when used to defeat the purpose of this Agrement, and Checkers, Switchmen, Hostlers, Forklift Operators, Riggers and Dockmen.

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ARTICLE 42.

SENIORITY

Section 1.

Seniority rights for employees shall prevail.

Seniority shall be broken only by discharge, voluntary quit, or more than a three (3) year layoff. In the event of a layoff, an employee so laid off shall be given two (2)

weeks notice of recall by certified mail to his last known home address. In the event the employee fails to make himself available for work at the end of said two (2) weeks, he shall lose all seniority rights under this Agreement. Employees shall give the Employer one (1) week notice of intent to return to work.

A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment.

Any protest to the seniority list must be made in writing, with a copy to the Employer and the Union, within thirty (30) days from the date of posting of the seniority list. In the event no protest is made the seniority list, as posted, shall be considered correct and final.

Controversies regarding seniority shall be settled by the Employer and the Union. Failing a settlement by these parties, the controversy shall be processed under the Grievance Procedure set out in Articles 44 and 45 of this Agreement.

Section 2.

(a) Terminal seniority, as measured by length of service at such terminal, shall prevail, except as otherwise provided for in this Agreement.

Reduction in Force

(b) When it becomes necessary to reduce the working force, the last employee hired shall be laid off first; and when the force is again increased, the employees are to be returned in the reverse order in which they were laid off.

Section 3.

(a) In all cases where physical fitness or ability to perform the required work are equal, seniority

rights shall govern. The Employer has the right to discipline or transfer any employee or employees in the same classification, to instruct and direct the work, manage the terminals and docks and assign its equipment, and to make rules and regulations for the conduct of its business, not to conflict with the terms of this Agreement.

(b) All new positions or permanent vacancies will be promptly bulletined at the Company terminal for a period of five (5) working days. Qualified employees desiring such positions shall file application in writing with the designated officer of the Employer within five (5) work days. Such assignment will be governed by seniority of applicants, as above outlined. Assignment shall be made within five (5) working days after the closing of bidding. Employees assigned to positions on the effective date of this Agreement or assigned thereafter will not be permitted to transfer to another position until such time that a vacancy or new position exists.

Section 4. Bulletining Of Jobs

The bulletining of positions or vacancies shall consist of the number of days, classifications, the rate of pay, the days to be worked and the starting time, which shall be the same time each day of the assignment except that on two (2) days of the assignment such starting time may be two (2) hours either before the regular starting time or on two (2) days two (2) hours after the regular starting time, but the bulletining of such positions shall specify the starting time on each day of the assignment.

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ARTICLE 55.

WAGES AND HOURS

Section 1.

The guaranteed work week shall be forty (40) hours per week, five (5) consecutive days with a daily guarantee of eight (8) hours per day, time and one-half (1½) after eight (8) hours per day and/or forty (40) hours per week.

Time and one-half (1½) the applicable hourly rate of pay shall be paid for all work performed on the sixth (6th) day, and double time for the seventh (7th) day.

Section 2.

The hourly rates of pay shall be as follows:

Rates of Pay

	4-1-70	7-1-70	1-1-71	
Checker				
SW	$4.30	$4.45	$4.85	
	7-1-71	1-1-72	7-1-72	1-1-73
SW	$5.10	$5.35	$5.60	$5.80
		4-1-70	7-1-70	1-1-71
SE		4.28	4.43	4.83
	7-1-71	1-1-72	7-1-72	1-1-73
SE	5.08	5.33	5.60	5.80
Driver				
		4-1-70	7-1-70	1-1-71
SW		$4.30	$4.45	$4.85
	7-1-71	1-1-72	7-1-72	1-1-73
SW	$5.10	$5.35	$5.60	$5.80
		4-1-70	7-1-70	1-1-71
SE		4.28	4.43	4.83
	7-1-71	1-1-72	7-1-72	1-1-73
SE	5.08	5.33	5.60	5.80

Switchman (Hostler)

		4-1-70	7-1-70	1-1-71
SW		$4.30	$4.45	$4.85
	7-1-71	1-1-72	7-1-72	1-1-73
SW	$5.10	$5.35	$5.60	$5.80
		4-1-70	7-1-70	1-1-71
SE		4.28	4.43	4.83
	7-1-71	1-1-72	7-1-72	1-1-73
SE	5.08	5.33	5.60	5.80

Fork Lift Operator

		4-1-70	7-1-70	1-1-71
SW		$4.30	$4.45	$4.85
	7-1-71	1-1-72	7-1-72	1-1-73
SW	$5.10	$5.35	$5.60	$5.80
		4-1-70	7-1-70	1-1-71
SE		4.28	4.43	4.83
	7-1-71	1-1-72	7-1-72	1-1-73
SE	5.08	5.33	5.60	5.80

Teamster Rigger

		4-1-70	7-1-70	1-1-71
SW		$4.30	$4.45	$4.85
	7-1-71	1-1-72	7-1-72	1-1-73
SW	$5.10	$5.35	$5.60	$5.80
		4-1-70	7-1-70	1-1-71
SE		4.28	4.43	4.83
	7-1-71	1-1-72	7-1-72	1-1-73
SE	5.08	5.33	5.60	5.80

Dockman

		4-1-70	7-1-70	1-1-71
SW		$4.14	$4.29	$4.69
	7-1-71	1-1-72	7-1-72	1-1-73
SW	$4.94	$5.19	$5.48	$5.68
		4-1-70	7-1-70	1-1-71
SE		4.18	4.33	4.73
	7-1-71	1-1-72	7-1-72	1-1-73
SE	4.98	5.23	5.48	5.68

New Classification

Classification of Teamster Rigger shall apply except where work is performed under the AGC agreement on job-site construction. Rigging is in addition to cribbing, blocking, etc. and includes any specialized equipment other than a crane or a similar type of equipment making lift or hoist.

ETMF FREIGHT SYSTEM

PLAINTIFF'S EXHIBIT
73-2801

Compliance Review 35-5-26
Date: 02/29/72
Station: Abilene, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
19	Mitchell, B. C.	11/14/67	WM7	City Driver
19	Bowles, John T.	06/08/48	WM8	Checker
19	Steele, James R.	09/16/49	WM8	Checker
19	Berry, Artie L.	06/09/48	WM7	City Driver
19	Brown, Aubrey K.	06/08/48	WM7	City Driver
19	Dunn, Orel P.	02/04/50	WM7	City Driver
19	Hatfield, Robert C.	08/08/50	WM7	City Driver
19	Kelley, Jack D.	04/01/51	WM7	City Driver
19	Kelley, William T.	02/03/51	WM7	City Driver
19	Martin, Jack	03/20/51	WM7	City Driver
19	Ingram, Mitchell J.	09/05/59	WM7	City Driver
19	Nelson, A. C.	05/03/58	WM7	City Driver
19	Wade, Lester B.	06/12/60	WM7	City Driver
19	Stevens, Virgil M.	05/11/52	WM1	Terminal Manager
19	Harris, John E.	06/07/48	WM5	Rate Clerk
19	Breaux, Bobbie B.	01/21/51	WF5	Lead Acct Clerk
19	Shofner, Billie R.	09/17/68	WF5	OSD Clerk

STATION TOTAL 17

352

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Amarillo, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
20	Baggett, Byron M.	03/28/53	WM7	City Driver
20	Conaiser, Arlis D.	11/01/52	WM7	City Driver
20	Sain, Harold W.	11/07/52	WM7	City Driver
20	Thomas, Wallace J.	03/30/54	WM7	City Driver
20	Young, James E.	06/01/53	WM7	City Driver
20	Cook, James A.	04/18/66	WM1	Terminal Manager
20	Walker, Joene	10/07/63	WF5	Rate Clerk

STATION TOTAL 7

353

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Atlanta, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
21	Kirkland, David J.	09/02/48	WM7	City Driver
21	Turner, Elbert	05/17/62	WM7	City Driver
21	Turner, William	02/23/46	WM1	Terminal Manager

STATION TOTAL 4

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Austin, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
22	Bowley, Kenneth W.	09/20/71	WM7	City Driver
22	Hays, Winston T.	01/10/72	WM7	City Driver
22	Bukowsky, Dudley G.	01/21/69	WM7	City Driver
22	Bartz, William	08/24/61	WM7	City Driver
22	Berggren, Carroll E.	02/21/52	WM7	City Driver
22	Clendennen, Alvin C.	04/22/46	WM7	City Driver
22	Pittman, Bennie C.	03/08/64	WM7	City Driver
22	Sprouse, Clifford M.	08/28/46	WM7	City Driver
22	Jones, Otho L.	04/17/50	WM1	Terminal Manager
22	Sepulveda, Jose Z.	06/16/67	SM1	Dock Foreman/Supvr
22	Clark, Fay A.	10/22/70	WF5	Lead Acct Clerk
22	Westbrook, James M.	08/05/70	WM5	OSD Clerk

STATION TOTAL 12

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Beaumont, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
23	Davis, Joe M.	10/01/46	NM8	Checker
23	Wright, Belma P.	08/17/50	WM8	Checker
23	Atkins, Jerry W.	05/09/66	WM7	City Driver
23	Bailey, Charles L.	07/28/67	WM7	City Driver
23	Booker, Jessie	10/21/48	WM7	City Driver
23	Boykin, Earnest	09/17/53	WM7	City Driver
23	Carnahan, W. G.	09/02/55	WM7	City Driver
23	Carroll, Lavil	01/03/51	WM7	City Driver
23	Cook, Elvin H.	11/01/61	WM7	City Driver
23	Doucet, Adam B.	07/15/57	WM7	City Driver
23	Downs, Walter P.	08/19/68	WM7	City Driver
23	Fontenot, Hubert	09/01/65	WM7	City Driver
23	Fontenot, L. J.	08/08/60	WM7	City Driver
23	Gaudet, James H.	03/15/57	WM7	City Driver
23	Guillory, Emanuel J.	11/03/69	NM8	City Driver
23	Gums, Philip	06/05/51	WM7	City Driver

23	Jones, Roy	06/17/48	NM7	City Driver
23	Kelley, Tommy R.	11/04/69	WM8	City Driver
23	Lacomb, Riley H.	06/02/60	WM7	City Driver
23	Lejune, Rodney	09/08/65	WM7	City Driver
23	Martin, R. G.	07/01/57	WM7	City Driver
23	McClanahan, T. F.	10/01/66	WM7	City Driver
23	McDuffie, J. E.	02/16/52	WM7	City Driver
23	McMellon, L. J.	07/07/54	WM7	City Driver
23	Miller, Edgar W.	07/15/67	WM7	City Driver
23	Richard, Lawrence	03/15/57	WM7	City Driver
23	Robinson, John	09/04/51	NM7	City Driver
23	Thibodeaux, O. J.	10/02/51	WM7	City Driver
23	Thibodeaux, J. D.	11/14/68	WM7	City Driver
23	Thibodeaux, W. R.	07/14/51	WM7	City Driver
23	Tupper, Herbert	10/03/66	WM7	City Driver
23	Webb, John M.	09/14/63	WM7	City Driver
23	Webb, Semun O.	05/16/66	WM7	City Driver
23	Webb, Larry N.	11/15/68	WM8	Dockman
23	Sears, Harry F.	10/15/35	WM1	Terminal Manager
23	Ray, Paul E.	09/12/55	WM1	Dock Foreman/Supvr
23	Layfield, Jr., C.	11/05/48	WM4	Salesman
23	Hoffman, Billy C.	09/26/59	WM1	Line Dispatcher

23	Sears, Dorothy	02/07/51	WF5	OSD Clerk
23	Fillingame, Jr., Jessie E.	09/08/70	WM5	General Clerk
23	McCormick, Calvin	06/19/57	WM1	Office Manager
				STATION TOTAL 41

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Brownwood, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
26	Carroll, Jr., Onie A.	10/14/68	WM7	City Driver
26	Collier, Earnest E.	04/30/57	WM7	City Driver
26	Cumba, Billy N.	08/18/48	WM7	City Driver
26	Harvison, Lee F.	09/19/55	WM7	City Driver
26	Low, Alfred D.	04/11/56	WM7	City Driver
26	Nullum, Loyd L.	06/07/48	WM1	Terminal Manager
26	Barr, Hattie R.	05/23/57	WF5	Lead Acct Clerk
				STATION TOTAL 7

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Corporate Office
OCCUPATION CODE SEQUENCE

STA	NAME	HIRE DATE	EEO	TITLE
99	Atkins, Robert	04/01/70	WM4	Salesman
99	Young, David L.	09/16/68	WM4	Salesman
99	Magill, John J.	06/05/70	WM4	Salesman
99	Bruce, Webster G.	12/10/55	WM1	Shop Superintendent
99	Anderson, James D.	02/15/62	WM1	Department Head
99	Barnes, Jesse N.	07/01/68	WM5	Department Head
99	Beavers, Jimmy	09/10/51	WM1	Department Head
99	Dawson, F. H.	03/10/52	WM1	Department Head
99	Farmer, Raymond K.	09/14/56	WM1	Department Head
99	Furrh, William P.	03/29/71	WM1	Department Head
99	Hitz, George	01/01/51	WM1	Department Head
99	Mathis, Joel H.	12/01/70	WM1	Department Head
99	O'Brien, John F.	01/04/72	WM5	Department Head
99	Odom, Harold	08/31/70	WM1	Department Head
99	Perez, Pedro A.	03/02/70	SM1	Department Head
99	Revill, Jack	05/28/69	WM1	Department Head
99	Schiff, George	01/07/51	WM1	Department Head

99	Shelton, W. G.	12/19/66	WM1	Department Head
99	Simmons, Dewitt	01/19/47	WM1	Department Head
99	Wells, Jack	08/15/55	WM1	Department Head
99	White, Harold P.	06/10/43	WM1	Department Head
99	Williamson, William	01/04/71	NM1	Department Head
99	Hendrickson, Thomas H.	06/12/69	WM5	Department Head
99	Akridge, Frank O.	01/14/64	WM1	Auditor
99	Cates, R. A.	06/01/51	WM1	Auditor
99	Harrell, Joe D.	02/26/68	WM1	Auditor
99	Anderson, Fred S.	12/10/70	WM1	Officer
99	Blakeney, Jr., M.	10/01/48	WM1	Officer
99	Brown, John K.	01/26/70	WM1	Officer
99	Cloer, Everett E.	01/01/65	WM1	Officer
99	Huffman, R. N.	09/26/57	WM1	Officer
99	Johnson, H. L.	09/26/53	WM1	Officer
99	Kidwell, Rollo E.	10/01/62	WM2	Officer
99	Lewis, J. D.	05/14/68	WM1	Officer
99	Maier, Robert H.	05/26/69	WM1	Officer
99	McMurry, N. E.	03/17/52	WM2	Officer
99	Paschall, G. E.	07/24/53	WM1	Officer
99	Peterson, John C.	10/27/69	WM1	Officer
99	Sanders, James I.	12/24/45	WM1	Officer
99	Paschall, James H.	11/18/57	WM1	Operations Manager

99	Allen, Carl D.	05/17/71	WM1	Asst Dept Head
99	Bierman, H. C.	12/26/51	WM1	Asst Dept Head
99	Clark, Jerald W.	04/19/65	WM1	Asst Dept Head
99	Connally, Alma V.	04/23/70	WF4	Asst Dept Head
99	Dillon, Paul D.	10/16/64	WM1	Asst Dept Head
99	Dreyer, Henry E.	01/04/71	WM1	Asst Dept Head
99	Hall, Carl L.	05/17/71	WM1	Asst Dept Head
99	Hammett, James L.	02/25/64	WM5	Asst Dept Head
99	Merrill, Richard A.	05/24/71	WM1	Asst Dept Head
99	Murphy, James M.	04/23/51	WM1	Asst Dept Head
99	Oates, Betty J.	06/30/65	WF5	Asst Dept Head
99	Racanelli, M. D.	05/27/68	WM5	Asst Dept Head
99	Thurman, E. G.	09/07/60	WM1	Asst Dept Head
99	Wallwork, John F.	09/02/58	WM5	Asst Dept Head
99	Jungman, Edgar L.	09/15/45	WM1	Asst Dept Head
99	Campbell, Rodger R.	06/01/48	WM1	Asst Dept Head
99	Lew, Moon J.	10/15/52	OM1	Asst Dept Head
99	Marquette, Roland	05/07/62	WM4	Warehouse Supervisor
99	Loggins, Patsy L.	10/24/66	WF5	Dictaphone Operator
99	McGehee, Rena	12/06/55	WF5	Dictaphone Operator
99	James, Z. R.	11/29/54	WM5	Rate Clerk
99	Johnson, Joyce	09/28/59	WF5	Rate Clerk
99	Smith, Jr., Lemuel M.	08/30/71	WM5	Rate Clerk

99	Crumpler, Jr., G. C.	07/07/58	WM5	Line Dispatcher
99	Higbee, Douglas G.	09/15/71	WM1	Line Dispatcher
99	Renfro, Donald D.	09/07/71	WM1	Line Dispatcher
99	Rosenkranz, C. F.	08/10/66	WM5	Line Dispatcher
99	Smith, Manson D.	06/18/68	WM1	Line Dispatcher
99	Thompson, D. E.	03/01/62	WM5	Line Dispatcher
99	Stapleton, James R.	04/01/68	WM1	Line Dispatcher
99	Austin, Bobbie B.	07/16/62	WF5	Exec Secretary
99	Crabtree, Sybil F.	10/26/59	WF5	Exec Secretary
99	Dawson, Bessie	10/29/51	WF5	Exec Secretary
99	Flagg, Katherine A.	10/26/70	WF5	Exec Secretary
99	Hall, Wanda L.	03/07/60	WF5	Exec Secretary
99	Kalka, Louise	09/29/58	WF5	Exec Secretary
99	Kline, Wilbur R.	06/18/52	WM5	Exec Secretary
99	Massey, Mary	06/21/65	WF5	Exec Secretary
99	McDonald, Billie R.	02/20/56	WF5	Exec Secretary
99	Miller, Shirley H.	08/23/60	WF5	Exec Secretary
99	Palmore, Pansy G.	09/08/69	WF5	Exec Secretary
99	Prater, Betty J.	03/29/71	WF5	Exec Secretary
99	Smith, Mona D.	03/30/70	WF5	Exec Secretary
99	Bearden, Lavonna	09/23/63	WF5	Secretary
99	Braucht, Glena D.	07/12/71	WF5	Secretary
99	Darden, Donna A.	12/06/71	WF5	Secretary

99	Kerr, Lucinda D.	03/01/71	WF5	Secretary
99	Schiff, Norma E.	11/29/71	WF5	Secretary
99	Speir, Rosa	06/15/59	WF5	Secretary
99	Bradford, Sandra J.	02/01/71	WF5	Secretary
99	Haldran, Barbara J.	03/07/68	WF5	Secretary
99	Brady, Barbara L.	09/20/65	WF5	Keypunch Operator
99	Cargile, Wanda F.	09/06/60	WF5	Claim Clerk
99	Christie, Annie	12/29/50	WF5	Claim Clerk
99	Harvey, Loye H.	09/06/51	WF5	Claim Clerk
99	Williams, Roger W.	08/22/68	WM5	Claim Clerk
99	Boone, Joy L.	08/02/71	WF5	Accts Payable Clerk
99	Clements, Nettie L.	11/16/70	WF5	Accts Payable Clerk
99	Greer, Helen B.	11/04/63	WF5	Accts Payable Clerk
99	Gregston, Doris R.	04/12/71	WF5	Accts Payable Clerk
99	May, William C.	08/25/60	WM5	Accts Payable Clerk
99	Potter, Melba S.	04/06/70	WF5	Accts Payable Clerk
99	Gamel, Bonnie	03/04/52	WF5	Lead Acct Clerk
99	Jenkins, Frances J.	06/02/69	WF5	Lead Acct Clerk
99	McIntosh, Glenda	08/01/55	WF5	Lead Acct Clerk
99	Milliken, Joan C.	10/06/62	WF5	Lead Acct Clerk
99	Shaw, Troy	10/03/55	WF5	Lead Acct Clerk
99	Abraham, Thelma	02/14/66	WF5	Payroll Clerk
99	Anderson, Leola	01/16/45	WF5	Payroll Clerk

99	Barber, Irby L.	05/26/52	WM5	Payroll Clerk
99	Harlin, Glendora M.	12/19/60	WF5	Payroll Clerk
99	McDonald, Charles L.	08/29/60	WM5	Payroll Clerk
99	Otto, Ruby	06/22/59	WF5	Payroll Clerk
99	Clark, Terry S.	03/09/70	WM5	PBX Operator
99	Kilgore; Betty J.	03/15/71	WF5	PBX Operator
99	Wienecke, H. V.	06/23/52	WF5	PBX Operator
99	Frioni, Anthony J.	12/23/57	WM5	Pressman
99	Harsh, Jerry W.	01/03/72	WM5	Pressman
99	Sanches, John W.	08/24/70	WM5	Pressman
99	Gaston, Patricia A.	08/23/71	WF5	Stenographer
99	Barnes, Ann	02/04/71	WF5	General Clerk
99	Bingham, Joyce C.	11/01/71	WF5	General Clerk
99	Caldwell, L. M.	03/26/52	WF5	General Clerk
99	Chambers, Nancy	03/21/62	WF5	General Clerk
99	Cummings, Gloria J.	02/01/71	WF5	General Clerk
99	Hack, Leota J.	09/07/71	WF5	General Clerk
99	Hamill, Jessie N.	11/29/71	WF5	General Clerk
99	Hensley, Martha	09/09/68	WF5	General Clerk
99	Isbell, Annie E.	07/23/56	WF5	General Clerk
99	Pool, Carolyne J.	05/05/69	WF5	General Clerk
99	Sims, Lydia E.	10/14/70	WF5	General Clerk
99	McKee, Virginia L.	03/10/71	WF5	General Clerk

99	Tey, Velma W.	02/04/63	WF5	General Clerk
99	Tomerlin, Juanita	04/11/23	WF5	General Clerk
99	Emmons, Margaret	05/20/68	WF5	File Clerk
99	Hooper, Jonna S.	06/14/71	WF5	File Clerk
99	Taylor, Linda F.	04/15/68	WF5	File Clerk
99	Tigert, Linda F.	01/22/68	WF5	File Clerk
99	Tomerlin, Dianna L.	11/16/70	WF5	File Clerk
99	Babb, Barbara V.	03/26/62	WF5	Accounting Clerk
99	Bauer, Maura	07/25/60	WF5	Accounting Clerk
99	Blasley, E. A.	06/07/65	WF5	Accounting Clerk
99	Bocklmehl, Edene	03/26/68	WF5	Accounting Clerk
99	Boland, Bernice	08/12/68	WF5	Accounting Clerk
99	Brooks, Helen I.	07/27/65	WF5	Accounting Clerk
99	Broome, Frances L.	11/30/70	WF5	Accounting Clerk
99	Conine, Norma F.	02/03/56	WF5	Accounting Clerk
99	Cowan, Cherree L.	04/06/70	WF5	Accounting Clerk
99	Dansby, Jewel L.	11/13/63	WF5	Accounting Clerk
99	Doyle, Juanita	01/03/66	WF5	Accounting Clerk
99	Duvall, Alma	08/04/52	WF5	Accounting Clerk
99	Ellore, Sally	05/28/68	WF5	Accounting Clerk
99	Gill, Betty J.	12/02/60	WF5	Accounting Clerk
99	Griffin, Frances	11/14/66	WF5	Accounting Clerk
99	Gruber, Patricia M.	11/16/70	WF5	Accounting Clerk

99	Hall, Marsha K.	10/15/70	WF5	Accounting Clerk
99	Hawkins, Agnes H.	05/26/58	WF5	Accounting Clerk
99	Fanning, Jane	10/24/68	WF5	Accounting Clerk
99	Morris, Peggy J.	02/15/65	WF5	Accounting Clerk
99	Owen, Ruth M.	05/31/65	WF5	Accounting Clerk
99	Perkins, Dorothy	07/07/58	WF5	Accounting Clerk
99	Renfro, Laura	04/23/62	WF5	Accounting Clerk
99	Ryan, Patricia L.	01/06/69	WF5	Accounting Clerk
99	Shackelford, Jean	01/29/68	WF5	Accounting Clerk
99	Shipley, Stella M.	02/23/56	WF5	Accounting Clerk
99	Squier, T. J.	03/10/54	WF5	Accounting Clerk
99	Sutphen, E. N.	09/23/68	WF5	Accounting Clerk
99	Timms, Bonnie C.	12/29/58	WF5	Accounting Clerk
99	Veatch, Barbara J.	09/05/67	WF5	Accounting Clerk
99	Whally, Dimple D.	06/06/52	WF5	Accounting Clerk
99	Wight, Linda K.	10/02/67	WF5	Accounting Clerk
99	Esch, T. A.	12/22/59	WM5	Watchman
99	Morris, Charlie B.	02/04/63	NM9	Janitor
99	Bray, A. B.	03/01/49	WM1	Company Driver
99	Lanier, Mary N.	02/08/71	WF5	Code Clerk
99	Mitchell, Marie F.	02/16/59	WF5	Code Clerk
99	Smith, Pauline H.	11/04/63	WF5	Code Clerk
99	Wesley, Shirley A.	06/07/71	WF5	Code Clerk

99	Littlefield, Shirley	04/01/68	WF5	Code Clerk
99	Leahy, Ronald W.	03/07/70	WM1	Operations Dept
99	Siple, Paul	05/24/71	WM1	Operations Dept
99	Worl, Ralph	10/22/56	WM1	Operations Dept
99	Zwiezen, Emil S.	02/21/69	WM1	Operations Dept
99	Cole, Don H.	01/14/71	WM5	Systems Analyst
99	Cox, Jack G.	04/01/68	WM1	Systems Analyst
99	Edwards, Leo W.	03/17/69	WM5	Programmer
99	Patterson, Robert E.	05/19/69	WM5	Programmer
99	Bronson, Gary D.	11/10/69	WM1	Mgmt Trainee
99	Cook, Thomas D.	09/08/71	WM1	Mgmt Trainee
99	Erickson, Brent L.	04/29/71	WM1	Mgmt Trainee
99	Brinkley, Charles E.	01/19/70	WM1	Regional Sales Mgr
99	Broadway, H. T.	08/29/56	WM1	Regional Sales Mgr
99	Hutcheson, Rolland C.	07/15/70	WM1	Regional Sales Mgr
99	Herritt, Robert T.	09/20/71	WM1	Regional Sales Mgr
				STATION TOTAL 194

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Dallas, Texas
OCCUPATION CODE SEQUENCE

STA	NAME	HIRE DATE	EEO	TITLE
18	Aldridge, J. B.	02/11/55	WM7	Line Driver
18	Alford, Harold D.	09/10/68	WM7	Line Driver
18	Amstutz, Roger L.	08/25/66	WM7	Line Driver
18	Benningfield, Lee R.	02/12/69	WM7	Line Driver
18	Blackmon, Culbert T.	02/21/51	WM7	Line Driver
18	Brackeen, Jr., Joe	05/25/50	WM7	Line Driver
18	Bradshaw, O'Dell	02/19/49	WM7	Line Driver
18	Buckley, Jesse E.	06/23/65	WM7	Line Driver
18	Burgess, Walter E.	08/02/50	WM7	Line Driver
18	Burns, Thomas R.	08/21/50	WM7	Line Driver
18	Burrell, Cecil E.	08/26/49	WM7	Line Driver
18	Castleman, F. R.	10/10/46	WM7	Line Driver
18	Chriss, Henry D.	08/18/53	WM7	Line Driver
18	Clark, J. D.	08/04/48	WM7	Line Driver
18	Crems, E. C.	02/12/48	WM7	Line Driver
18	Dunn, Alvin C.	08/21/47	WM7	Line Driver
18	Edmiston, Alfred W.	07/01/41	WM7	Line Driver

18	Frost, John H.	02/20/46	WM7	Line Driver
18	Gumpert, James P.	02/17/50	WM7	Line Driver
18	Hallman, G. A.	06/10/68	WM7	Line Driver
18	Hext, John D.	08/15/40	WM7	Line Driver
18	Hunter, Lloyd N.	08/06/68	WM7	Line Driver
18	Keith, Leonard L.	09/21/49	WM7	Line Driver
18	Konutek, Amil F.	05/08/46	WM7	Line Driver
18	Kutter, Adam F.	07/21/49	WM7	Line Driver
18	Larance, Velmer J.	04/01/50	WM7	Line Driver
18	Liles, James L.	06/07/48	WM7	Line Driver
18	Lovelace, Thomas	09/22/48	WM7	Line Driver
18	McLaughlin, Carey A.	08/20/71	WM7	Line Driver
18	Mitchell, Myron G.	09/03/71	WM7	Line Driver
18	Morgan, H. H.	12/08/46	WM7	Line Driver
18	Nichols, Jim R.	08/27/48	WM7	Line Driver
18	Oliver, Neubard C.	08/08/50	WM7	Line Driver
18	Oliver, Leon R.	08/14/51	WM7	Line Driver
18	Pruett, Willard E.	09/11/51	WM7	Line Driver
18	Rankin, Glenn F.	07/30/68	WM7	Line Driver
18	Reed, Dwight W.	04/20/46	WM7	Line Driver
18	Renfro, Lester H.	06/21/49	WM7	Line Driver
18	Roberson, Thomas G.	06/01/49	WM7	Line Driver
18	Scrimshire, F. H.	03/08/49	WM7	Line Driver

18	Smith, Otis C.	03/13/51	WM7	Line Driver
18	Smith, William C.	09/26/49	WM7	Line Driver
18	Stevens, John S.	06/20/50	WM7	Line Driver
18	Tadluck, W. L.	08/20/51	WM7	Line Driver
18	Tatsch, Freddy J.	10/23/48	WM7	Line Driver
18	Templin, Joe V.	05/18/67	WM7	Line Driver
18	Thomas, Ottis D.	08/17/66	WM7	Line Driver
18	Thompson, G. L.	06/26/68	WM7	Line Driver
18	Truelove, Robert S.	07/10/50	WM7	Line Driver
18	Turner, ! ! ! ! ! G.	07/06/50	WM7	Line Driver
18	Turner, Walter E.	05/05/49	WM7	Line Driver
18	Ussery, James E.	08/05/47	WM7	Line Driver
18	Vicars, Robert P.	03/15/49	WM7	Line Driver
18	Walker, Odas L.	03/25/55	WM7	Line Driver
18	Wammack, Joseph W.	07/26/50	WM7	Line Driver
18	Wardlow, Jimmie	07/30/68	WM7	Line Driver
18	Washington, Hoyt L.	09/30/52	WM7	Line Driver
18	Weinheimer, Elgin A.	04/17/42	WM7	Line Driver
18	Womack, Charles	08/10/66	WM7	Line Driver
18	Blackburn, James W.	06/30/67	WM8	Fork Lift Operator
18	Lemons, Samuel	06/07/48	NM8	Fork Lift Operator
18	Allen, Ronald D.	03/01/65	WM8	Checker
18	Allman, Robert C.	08/25/66	WM8	Checker

18	Anderson, Jimmy W.	03/06/69	WM8	Checker
18	Anderson, William	09/17/59	WM8	Checker
18	Araiza, Pete L.	07/31/68	SM8	Checker
18	Archibald, L. D.	11/05/68	WM8	Checker
18	Baisden, Jr., J. F.	09/11/68	WM8	Checker
18	Bailey, Robert T.	09/30/68	WM8	Checker
18	Baker, Donald D.	02/12/69	WM8	Checker
18	Barnett, Johnnie	01/31/66	NM8	Checker
18	Bartlett, Raymond L.	10/13/69	WM8	Checker
18	Batey, George N.	09/30/66	WM8	Checker
18	Bean, Dwain A.	09/06/67	WM8	Checker
18	Becerra, Louis C.	10/22/69	SM8	Checker
18	Bedford, Crawford A.	02/10/69	NM8	Checker
18	Bell, Roger E.	09/09/68	NM8	Checker
18	Bennett, Billy R.	09/17/67	WM8	Checker
18	Bennett, George A.	01/08/64	WM8	Checker
18	Bigham, Gary W.	11/18/66	WM8	Checker
18	Blair, Bill E.	09/03/68	WM8	Checker
18	Bradley, Sammy D.	07/19/68	WM8	Checker
18	Bralley, Larry H.	10/31/69	WM8	Checker
18	Brookins, Rodney D.	04/11/66	WM8	Checker
18	Busby, Earl E.	07/23/55	WM8	Checker
18	Canant, R. A.	09/21/66	WM8	Checker

18	Capps, Johnny D.	07/20/65	WM8	Checker
18	Carter, Elzie	02/10/69	NM8	Checker
18	Carter, James O.	09/16/67	WM8	Checker
18	Castle, Dennis W.	07/22/68	WM8	Checker
18	Castro, Galdino	11/22/66	SM8	Checker
18	Cate, Bobby W.	09/30/69	WM8	Checker
18	Chatham, B. D.	09/10/68	WM8	Checker
18	Clark, Winifred P.	07/16/56	WM8	Checker
18	Cleveland, Larry	09/22/67	WM8	Checker
18	Cole, Robert T.	06/14/67	WM8	Checker
18	Coleman, Henry M.	09/28/52	WM8	Checker
18	Coleman, James W.	03/20/52	WM8	Checker
18	Cooper, Randy N.	10/13/69	WM8	Checker
18	Corcoran, H. N.	01/25/64	WM8	Checker
18	Coronado, Johnny	09/09/63	SM8	Checker
18	Coverdale, D. W.	09/06/68	WM8	Checker
18	Cox, Robert L.	06/03/49	NM8	Checker
18	Crabtree, Elton R.	03/23/64	WM8	Checker
18	Crouch, Larry D.	02/12/69	NM8	Checker
18	Cunningham, Marvin E.	08/19/68	WM8	Checker
18	Daniel, Tommy A.	09/21/66	WM8	Checker
18	Davey, Robert S.	05/22/67	WM8	Checker
18	Davis, Billy R.	02/12/69	WM8	Checker

18	Defratus, Thomas D.	11/18/69	WM8	Checker
18	Dickerson, V.	09/04/68	WM8	Checker
18	Dickinson, Russell L.	09/30/69	WM8	Checker
18	Dishong, Jack	02/25/59	WM8	Checker
18	Dixon, Jimmy W.	06/10/67	WM8	Checker
18	Dooley, David W.	11/08/69	WM8	Checker
18	Dutton, Melvin	09/13/68	WM8	Checker
18	Edmonds, Eddie R.	07/11/68	WM8	Checker
18	Evans, Lewis	02/28/47	NM8	Checker
18	Farmer, Virgil C.	07/15/68	WM8	Checker
18	Finch, Isaac	02/21/48	NM8	Checker
18	Fink, Johnny E.	09/07/68	WM8	Checker
18	Flemming, Willie Z.	11/21/69	NM8	Checker
18	Flowers, James A.	01/08/57	WM8	Checker
18	Ford, Richard P.	08/26/68	WM8	Checker
18	Franks, W.	10/23/67	WM8	Checker
18	Fultner, David B.	10/13/69	WM8	Checker
18	Furr, Freddie M.	09/27/66	WM8	Checker
18	Garza, Jesse G.	10/29/69	SM8	Checker
18	Gee, Jr., Carl	05/20/55	WM8	Checker
18	Glaze, Norman C.	09/30/69	WM8	Checker
18	Goerdel, Fred L.	02/10/69	WM7	Checker
18	Goer, Haymond	10/31/69	NM8	Checker

18	Goodwin, James K.	09/12/67	WM8	Checker
18	Goolsby, Clarence R.	03/05/69	WM8	Checker
18	Granstaff, Robert C.	06/23/58	WM8	Checker
18	Grinnell, Emmett S.	03/23/69	WM8	Checker
18	Gunnels, Arthur W.	11/15/68	WM8	Checker
18	Hall, John D.	07/14/68	WM8	Checker
18	Hallmark, Mendal F.	10/29/69	WM8	Checker
18	Hamilton, James M.	09/05/67	WM8	Checker
18	Hamner, Virgil E.	10/31/69	WM8	Checker
18	Haney, William E.	09/30/69	WM8	Checker
18	Hann, Abraham L.	07/02/47	NM8	Checker
18	Harden, Melvin A.	10/11/66	NM8	Checker
18	Harvey, Melvin P.	09/28/59	WM8	Checker
18	Hawley, Kenneth L.	05/15/57	WM8	Checker
18	Hendun, Delbert D.	08/28/68	WM8	Checker
18	Hightower, Alversten	02/21/69	NM8	Checker
18	Hipp, Andrew J.	05/17/56	WM8	Checker
18	Hitt, Tolbert B.	02/16/63	WM8	Checker
18	Hoffman, Douglas	11/19/69	WM8	Checker
18	Hooten, Marvin O.	11/21/66	NM8	Checker
18	Howard, Sr., Cecil E.	09/75/49	WM8	Checker

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: El Paso, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
27	Adair, Dale L.	09/01/71	WM7	Line Driver
27	Bordelon, Alphonse	09/29/69	WM7	Line Driver
27	Burgoyne, Edward W.	10/16/71	WM7	Line Driver
27	Canafax, Robert L.	08/13/71	WM7	Line Driver
27	Dickson, H. S.	05/29/68	WM7	Line Driver
27	Fellabaum, Jr., Edward A.	08/17/71	WM7	Line Driver
27	Harris, Jr., Arlie R.	01/22/72	WM7	Line Driver
27	Hayes, Jr., William T.	08/13/71	WM7	Line Driver
27	Head, Joe H.	05/23/71	WM7	Line Driver
27	Lee, James A.	10/16/71	WM7	Line Driver
27	Hinjares, Ernesto G.	05/15/71	SM7	Line Driver
27	Moore, Walter B.	01/26/72	WM7	Line Driver
27	Nally, Gene V.	01/27/72	WM7	Line Driver
27	O'Briant, Marion P.	07/12/54	WM7	Line Driver
27	Ribble, Cecil L.	07/23/71	WF7	Line Driver

27	Roberts, Clifford M.	05/09/71	WM7	Line Driver
27	Russell, Wayne A.	01/22/72	WM7	Line Driver
27	Storts, Billy R.	10/09/71	WM7	Line Driver
27	Villalogos, Saul R.	08/17/71	SM7	Line Driver
27	Wilson, George M.	01/25/72	WM7	Line Driver
27	Yeater, Mike C.	02/10/72	WM7	Line Driver
27	Craig, Hill E.	10/01/48	WM7	Line Driver
27	Delgado, Joe L.	04/30/61	SM7	Line Driver
27	Jones, Winfred C.	04/01/66	WM7	Line Driver
27	Rhoades, Edward H.	04/01/56	WM7	Line Driver
27	Eaton, James N.	05/01/61	WM7	Line Driver
27	Felix, Hubert F.	04/01/48	WM7	Line Driver
27	Baker, C. E.	04/01/69	WM7	Line Driver
27	Boyer, Robert D.	06/30/66	WM7	Line Driver
27	Black, Thomas D.	05/11/52	WM7	Line Driver
27	Abernathy, J. L.	06/01/40	WM7	Line Driver
27	Roberts, James J.	12/24/46	WM7	Line Driver
27	Roles, Travis E.	09/11/50	WM7	Line Driver
27	Shugart, Richard A.	09/07/51	WM7	Line Driver
27	Griffin, Robert S.	04/16/65	WM7	Line Driver
27	Kevil, Ira	02/16/47	WM7	Line Driver
27	Davis, Jack L.	09/24/65	WM7	Line Driver
27	Gorton, Raymond D.	04/12/66	WM7	Line Driver

27	Green, Darwin C.	05/26/66	WM7	Line Driver
27	Harris, Harold L.	09/22/66	WM7	Line Driver
27	Hoover, Lee R.	10/01/65	IM7	Line Driver
27	Johnson, Emil	07/01/65	WM7	Line Driver
27	Klaus, Jr., E.	08/09/67	WM7	Line Driver
27	Knouf, Monte C.	07/21/66	WM7	Line Driver
27	McQuade, Virgil K.	10/06/65	WM7	Line Driver
27	Robertson, Willard F.	09/09/65	WM7	Line Driver
27	Scobie, Glenn	04/17/63	IM7	Line Driver
27	Smith, Edgar L.	08/22/66	WM7	Line Driver
27	Stevenson, Glenn G.	06/13/67	WM7	Line Driver
27	Vinyard, Roy L.	08/29/53	WM7	Line Driver
27	Holden, Carl E.	01/06/60	WM7	Line Driver
27	Asher, James T.	04/10/62	WM7	Line Driver
27	Knoll, Frederick J.	09/12/62	WM7	Line Driver
27	Burleigh, Edward W.	07/21/52	WM7	Line Driver
27	Tanner, Sr., Walter W.	03/16/56	WM7	Line Driver
27	Adauto, Clemente	10/26/46	SM7	City Driver
27	Banda, Miguel	01/24/57	SM7	City Driver
27	Bradford, George S.	04/01/48	NM7	City Driver
27	Castillo, Salvador R.	01/20/46	SM7	City Driver
27	Cordeno, Juan	07/05/49	SM7	City Driver
27	Esparza, Anastacio	07/05/52	SM7	City Driver

27	Gonzalez, George R.	02/08/40	SM7	City Driver
27	Guzman, Isabel H.	01/30/57	SM7	City Driver
27	Maese, Sabino	05/21/61	SM7	City Driver
27	Martinez, Isidro	10/01/47	SM7	City Driver
27	Medina, Atanacio C.	03/01/56	SM7	City Driver
27	Mendivil, Maximo	07/25/67	SM7	City Driver
27	Molinar, Rodolpho	09/01/46	SM7	City Driver
27	Molinar, Salvador	07/05/48	SM7	City Driver
27	Ramos, Santos G.	08/01/53	SM7	City Driver
27	Saenz, Bernardo	07/01/68	SM7	City Driver
27	Salcido, Ramon	08/04/58	SM7	City Driver
27	Uranga, Jesus	06/20/68	SM7	City Driver
27	Villa, Salvador	07/25/67	SM7	City Driver
27	Villar, George	06/16/58	SM7	City Driver
27	Banda, Pete	03/01/52	SM7	City Driver
27	Ramirez, Jesus R.	04/04/45	SM7	City Driver
27	Villalobos, Miguel	02/15/51	SM7	City Driver
27	Martin, Kenneth V.	08/13/71	WM6	A—Mechanic
27	Ingram, Jim T.	07/29/68	WM1	Terminal Manager
27	Ruth, Billy R.	04/15/71	WM1	Dock Foreman/Supvr
27	Stovall, Marshall T.	09/21/71	WM1	Dock Foreman/Supvr
27	Hullum, David L.	06/29/68	WM1	Dock Foreman/Supvr
27	McDade, John R.	02/04/39	WM4	Salesman

27	De La Vega, Henry F.	06/05/52	SM4	Salesman	
27	Adams, Ira Ray	04/15/71	WM8	Serviceman	
27	Ake, George M.	03/10/52	WM6	Serviceman	
27	Cuellar, Jr., C. J.	07/01/68	SM8	Serviceman	
27	Lacy, David B.	10/18/53	NM8	Serviceman	
27	Wooten, David C.	06/01/51	WM8	Serviceman	
27	Olivas, E.	05/23/67	SF5	Rate Clerk	
27	Armstrong, John O.	08/27/71	WM1	Line Dispatcher	
27	Duncan, Cristina B.	11/06/57	SF5	Lead Acct Clerk	
27	McNeil, Carole T.	05/04/64	WF5	OSD Clerk	
				STATION TOTAL	94

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Ft. Worth, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
28	Archie, Willie B.	08/08/51	NM8	Checker
28	Capps, E. A.	09/27/45	WM8	Checker
28	Henry, John E.	06/01/43	NM8	Checker
28	Rivers, Fred L.	04/14/59	WM8	Checker
28	Ashcraft, C. E.	08/01/61	WM7	City Driver
28	Bretches, K. E.	06/16/50	WM7	City Driver
28	Coker, Delker C.	09/09/68	WM7	City Driver
28	Cook, Donald	03/14/66	WM7	City Driver
28	Dikes, Truman G.	11/16/53	WM7	City Driver
28	Ellis, Douglas E.	03/14/66	WM7	City Driver
28	Fitzgerald, C. W.	08/31/64	WM7	City Driver
28	Frady, J. W.	03/05/50	WM7	City Driver
28	Gibbs, Lawrence H.	07/01/59	WM7	City Driver
28	Hargrove, Lee	07/09/51	WM7	City Driver
28	Hensley, Sam	07/21/58	WM7	City Driver
28	Henson, John G.	09/22/69	WM7	City Driver

28	Holdridge, R. L.	07/20/59	WM7	City Driver
28	Ingle, S. E.	04/25/66	WM7	City Driver
28	Kimbrow, Kirbie K.	10/20/69	WM7	City Driver
28	Lester, G. D.	10/30/49	WM7	City Driver
28	Like, Thomas J.	06/21/66	WM7	City Driver
28	Love, Dwayne L.	10/23/67	WM7	City Driver
28	Martin, James W.	05/13/68	WM7	City Driver
28	McGee, W. E.	10/09/50	WM7	City Driver
28	McKie, Jackie D.	11/21/68	WM7	City Driver
28	Moore, Bob G.	04/25/66	WM7	City Driver
28	Parnell, J. M.	06/16/50	WM7	City Driver
28	Roberts, H. M.	05/20/50	WM7	City Driver
28	Ruddick, Virgil V.	10/13/69	WM7	City Driver
28	Saunders, Robert D.	09/22/69	WM7	City Driver
28	Smith, Jr., James D.	11/21/68	WM7	City Driver
28	Taylor, Glenn A.	09/22/69	WM7	City Driver
28	Taylor, Virgil	08/01/61	WM7	City Driver
28	Walihall, James	06/17/65	WM7	City Driver
28	Whitaker, D. O.	04/13/59	WM7	City Driver
28	White, Glen D.	06/16/69	WM7	City Driver
28	White, Jr., W. M.	03/29/65	WM7	City Driver
28	Wood, James R.	07/20/59	WM7	City Driver
28	Wooten, Gerald W.	10/17/69	WM7	City Driver

28	Brooks, Michael E.	11/22/68	WM8	Dockman
28	Gaston, Jim	08/05/52	WM1	Terminal Manager
28	Holt, Wynn T.	06/22/71	WM1	Dock Foreman/Supvr
28	Jones, Grover	07/10/54	WM1	Dock Foreman/Supvr
28	Leach, James P.	09/09/59	WM4	Salesman
28	Baird, Theo M.	06/01/49	WM1	Operations Manager
28	May, Anna	07/05/55	WF5	Rate Clerk
28	Lehen, Lloyd S.	10/27/69	WM5	OSD Clerk
28	Conner, Frank D.	03/20/68	WM1	Office Manager
				STATION TOTAL 48

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Henderson, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
29	Linton, Robert P.	06/14/48	WM7	City Driver
29	Miller, Ira	09/18/44	NM7	City Driver
29	Thompson, C. C.	09/23/46	WM7	City Driver
29	Dickson, Mims	06/15/35	WM1	Terminal Manager
29	Dickson, Ollie L.	12/26/35	WF5	Lead Acct Clerk
				STATION TOTAL 5

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Houston, Texas
OCCUPATION CODE SEQUENCE

STA	NAME	HIRE DATE	EEO	TITLE
30	Anderson, B. H.	04/04/63	WM8	Checker
30	Anderson, Harold	07/09/68	WM7	Checker
30	Beets, Alvie	07/02/62	WM8	Checker
30	Blow, Oscar K.	07/30/50	WM8	Checker
30	Britt, Robert E.	12/05/69	WM8	Checker
30	Brownlee, Fred T.	12/11/69	WM8	Checker
30	Bullock, George E.	09/12/69	WM8	Checker
30	Callier, Stumon	04/08/65	NM8	Checker
30	Chandler, J. D.	09/06/49	NM8	Checker
30	Cicherski, Aloysius	02/06/61	WM8	Checker
30	Clay, Alvin G.	12/13/69	NM8	Checker
30	Cook, Frank M.	10/07/63	WM8	Checker
30	Costilla, Eulalio	07/03/62	SM8	Checker
30	Delarosa, Mike F.	10/09/51	SM8	Checker
30	Fontenette, R.	06/28/66	NM8	Checker
30	Gilmore, Dan E.	09/06/69	WM8	Checker
30	Gloyd, Roosevelt	11/10/69	NM8	Checker

30	Graddy, Marion L.	09/11/69	WM8	Checker
30	Graves, Johnny L.	12/02/69	WM8	Checker
30	Green, Billy R.	04/28/67	WM8	Checker
30	Harris, Willie B.	08/29/63	NM8	Checker
30	Harrison, Charles E.	09/08/69	NM8	Checker
30	Henderson, Roland L.	12/17/69	NM8	Checker
30	Hernandez, R. G.	10/13/67	SM8	Checker
30	Holt, Andrew L.	07/06/67	NM8	Checker
30	Hudson, Charlie	03/13/57	WM8	Checker
30	Hypolite, Troy J.	12/01/69	NM8	Checker
30	Ivy, Norvell	09/05/69	NM8	Checker
30	Jarmon, Roger L.	05/18/48	NM8	Checker
30	Keith, Frank E.	09/03/60	WM8	Checker
30	Lemaire, Douglas H.	12/10/69	WM8	Checker
30	Lewis, Willard E.	10/07/68	WM8	Checker
30	MacLean, Donald G.	09/02/69	WM8	Checker
30	McKinney, K. W.	11/08/65	WM8	Checker
30	Munoz, Gaston	04/01/65	SM8	Checker
30	Neal, Hal B.	06/12/51	NM8	Checker
30	Newman, Charles E.	06/10/63	NM8	Checker
30	Oliphant, Harold S.	12/07/69	WM8	Checker
30	Palmer, William H.	10/08/64	WM8	Checker
30	Parker, B. J.	03/07/47	NM7	Checker

30	Perez, Nabor A.	12/12/69	SM8	Checker
30	Possoit, John K.	09/09/69	WM8	Checker
30	Prejean, John L.	09/10/69	NM8	Checker
30	Price, Clifford E.	12/06/69	NM8	Checker
30	Prophet, Richard	05/30/61	NM8	Checker
30	Rayford, James M.	11/05/51	NM8	Checker
30	Roberson, Dan	01/27/54	WM8	Checker
30	Rodriguez, G.	12/27/50	SM8	Checker
30	Rodriguez, Jr., R.	02/26/50	SM8	Checker
30	Shaw, Duval J.	11/14/69	NM8	Checker
30	Singletary, George C.	09/04/69	NM8	Checker
30	Smith, Edwin	06/01/65	NM8	Checker
30	Smith, Willie E.	07/13/59	NM8	Checker
30	Templer, Garlan	10/04/67	WM8	Checker
30	Turner, Roosevelt	12/03/69	NM8	Checker
30	Turner, Walter E.	07/11/66	NM8	Checker
30	Ward, John E.	05/30/64	NM8	Checker
30	West, Willie	02/06/51	NM8	Checker
30	Wilborn, Gobell	04/10/48	NM8	Checker
30	Wilson, Ira J.	11/11/69	NM8	Checker
30	Wright, James M.	01/18/65	WM8	Checker
30	Youngblood, Ivory	08/06/52	NM8	Checker
30	Youngblood, R.	05/14/51	NM8	Checker

30	Green, J. A.	10/07/68	NM8	City Driver
30	Adams, Arthur R.	10/07/68	NM7	City Driver
30	Alariz, Teofilo	06/06/63	SM7	City Driver
30	Alexander, Walker	10/03/51	NM7	City Driver
30	Alhanza, F. R.	08/10/65	SM7	City Driver
30	Alvey, G. C.	06/11/50	WM8	City Driver
30	Bassham, Carl L.	10/04/68	WM7	City Driver
30	Bean, Mike J.	03/18/69	WM7	City Driver
30	Beabout, Charles E.	12/04/69	WM7	City Driver
30	Bell, Marshall	06/08/59	NM7	City Driver
30	Blacknall, Jr., J.	08/30/66	NM7	City Driver
30	Brett, Joe	03/14/59	WM7	City Driver
30	Brooks, Melvin	03/07/69	NM7	City Driver
30	Broussard, Douglas C.	03/14/69	NM7	City Driver
30	Burciaga, Tony	07/26/51	SM7	City Driver
30	Burnett, Ozy	09/20/61	NM7	City Driver
30	Busby, Junior A.	07/20/56	NM7	City Driver
30	Cartwright, R. E.	08/11/65	NM7	City Driver
30	Caspersen, L. P.	06/04/61	WM7	City Driver
30	Castelan, Manuel A.	11/09/69	SM7	City Driver
30	Chapa, Jr., E. T.	06/29/66	SM7	City Driver
30	Cooper, Archie R.	03/04/69	NM7	City Driver
30	Cordaway, Daniel	07/16/68	SM7	City Driver

30	Covington, Melvin C.	02/07/69	NM7	City Driver
30	Cunningham, Bruce W.	09/25/68	WM7	City Driver
30	Daniel, John L.	09/26/68	WM7	City Driver
30	Dawson, Pharis	06/02/61	NM7	City Driver
30	Delagarza, R. U.	06/28/62	SM7	City Driver
30	Edwards, Jr., James F.	07/12/66	NM7	City Driver
30	Elizondo, Jr., Joe	03/06/69	SM7	City Driver
30	Estrello, Arthur	02/05/57	SM7	City Driver
30	Fife, Luther E.	09/25/67	WM7	City Driver
30	Flores, Ruben C.	07/18/68	SM7	City Driver
30	Fonesca, Jose F.	02/06/69	SM7	City Driver
30	Fowler, Thomas	09/18/61	WM7	City Driver
30	Francis, James A.	09/01/68	NM7	City Driver
30	Franco, Rudolph L.	06/03/61	SM7	City Driver
30	Franklin, Robert	05/01/67	NM7	City Driver
30	Frazier, C.	10/09/68	NM7	City Driver
30	Gallegos, G. T.	10/18/66	SM7	City Driver
30	Garcia, Nick G.	03/20/52	SM7	City Driver
30	Gardner, Charlie	09/08/49	NM7	City Driver
30	Gilliard, W. L.	03/15/54	NM7	City Driver
30	Gonzales, John R.	01/19/67	SM7	City Driver
30	Gross, Donald L.	07/15/68	WM7	City Driver
30	Hall, Emory E.	08/30/57	NM7	City Driver

30	Hammock, Willie F.	07/11/57	WM7	City Driver
30	Harmon, Marvin T.	10/10/55	WM7	City Driver
30	Harper, George H.	03/12/69	WM7	City Driver
30	Harris, Henderson	09/19/61	NM7	City Driver
30	Henley, Hallice T.	03/24/69	WM7	City Driver
30	Herford, Robert L.	11/09/59	WM7	City Driver
30	Hernandez, Sr., Henry	06/06/51	SM7	City Driver
30	Hicks, Boyce	10/12/64	NM7	City Driver
30	Hill, Joe	01/01/49	WM7	City Driver
30	Hillsman, S.	10/26/55	NM7	City Driver
30	Hinojosa, Armando	08/25/65	SM7	City Driver
30	Hodges, Curtis H.	04/25/67	WM7	City Driver
30	Hollins, Clarence T.	03/10/69	NM7	City Driver
30	Hopkins, Luke E.	09/16/52	NM7	City Driver
30	Houghton, Henry C.	08/17/53	WM7	City Driver
30	Huelett, Earl	01/03/52	NM7	City Driver
30	Ingram, James R.	08/26/65	WM7	City Driver
30	Jackson, John L.	09/27/65	NM7	City Driver
30	Jackson, R. A.	08/30/57	NM7	City Driver
30	Jacobs, Homer M.	03/14/59	NM7	City Driver
30	Jimenez, E. M.	10/09/63	SM7	City Driver
30	Jones, Tommie L.	04/28/65	NM7	City Driver
30	Kersh, Harold F.	02/06/57	WM7	City Driver

30	Kibby, Joe W.	07/01/62	WM7	City Driver
30	La Fell, Cornelius W.	02/05/69	NM7	City Driver
30	Leal, Augustine	04/26/67	SM7	City Driver
30	Leblanc, Marshall	07/29/57	NM7	City Driver
30	Lenox, Marvin L.	10/14/48	WM7	City Driver
30	Lesley, William	11/17/52	NM7	City Driver
30	Livingston, N.	05/31/61	NM7	City Driver
30	Lyons, W. L.	02/08/57	WM7	City Driver
30	Halveaux, Leroy J.	02/12/69	NM7	City Driver
30	Martinez, H.	10/04/65	SM7	City Driver
30	Massingill, R. L.	08/13/51	WM7	City Driver
30	Mayo, H. E.	10/13/64	NM7	City Driver
30	McCardell, Charlie W.	08/19/48	NM7	City Driver
30	McDaniel, R. T.	07/14/66	WM8	City Driver
30	McDonald, Gordon	08/27/51	WM7	City Driver
30	McDonald, W.	09/16/46	NM7	City Driver
30	McGee, Samuel B.	03/03/69	NM7	City Driver
30	McIntosh, R. T.	09/01/65	WM7	City Driver
30	McKee, Billy N.	09/11/57	WM7	City Driver
30	Mercer, E. C.	02/26/55	WM7	City Driver
30	Mindiola, R. L.	11/09/65	SM7	City Driver
30	Montoya, John	01/25/54	SM7	City Driver
30	Moreno, Paul	08/02/54	SM7	City Driver

30	Morris, William	02/17/69	NM7	City Driver
30	Moseley, Marvis	10/07/55	NM7	City Driver
30	Naranjo, L. R.	08/30/65	SM7	City Driver
30	Ochoe, Pilar P.	07/19/68	SM7	City Driver
30	Orsack, Freddie L.	10/05/68	WM7	City Driver
30	Ortega, Jr., R.	08/23/65	SM7	City Driver
30	Oten, Ever Lee	09/20/51	NM7	City Driver
30	Penney, Stanley	04/21/67	WM7	City Driver
30	Perez, Albert	04/26/65	SM7	City Driver
30	Perry, Walter C.	04/27/65	NM7	City Driver
30	Petties, Louis V.	06/08/59	NM7	City Driver
30	Pickens, Levie	06/02/65	NM7	City Driver
30	Plummer, Wilfred J.	03/21/69	NM7	City Driver
30	Pond, W. J.	01/08/57	WM7	City Driver
30	Pomonis, John C.	09/14/56	WM7	City Driver
30	Prado, Lawrence	10/20/66	SM7	City Driver
30	Ramirez, Joe	01/24/67	SM7	City Driver
30	Ramirez, P. S.	02/13/63	SM7	City Driver
30	Ray, Roscoe	07/13/66	NM7	City Driver
30	Regaldo, Louis S.	04/27/67	SM7	City Driver
30	Reggin, Frank	09/18/50	NM7	City Driver
30	Richards, Steve	08/06/51	NM7	City Driver
30	Riser, Tommie L.	02/25/54	NM7	City Driver

30	Rodney, W. E.	10/26/66	NM7	City Driver
30	Rogers, H. H.	08/30/65	NM7	City Driver
30	Rosemon, Gene A.	02/04/69	NM7	City Driver
30	Salas, Gilbert	02/05/49	SM7	City Driver
30	Salazar, Lino	09/19/61	SM7	City Driver
30	Sample, William P.	02/18/59	WM7	City Driver
30	Shields, Trenis G.	03/11/69	NM7	City Driver
30	Shows, John W.	08/20/56	WM7	City Driver
30	Smith, Wesley P.	07/21/66	WM7	City Driver
30	Stelly, B. L.	10/02/68	NM7	City Driver
30	Sturdavant, W. J.	10/08/54	WM7	City Driver
30	Swonke, C. J.	08/31/57	WM7	City Driver
30	Tatum, Oliver W.	09/10/51	NM7	City Driver
30	Taylor, Roosevelt	05/26/59	NM7	City Driver
30	Thomas, F. D.	04/21/53	NM7	City Driver
30	Thomas, John H.	04/18/62	NM7	City Driver
30	Thomas, Johnell	10/12/67	NM7	City Driver
30	Thomas, W.	10/12/55	NM7	City Driver
30	Tinch, James D.	04/03/63	WM7	City Driver
30	Tompkins, Donald R.	03/09/69	WM7	City Driver
30	Turner, John L.	10/01/68	WM7	City Driver
30	Valdez, Francisco	04/05/63	SM7	City Driver
30	Vallejo, Robert S.	04/17/62	SM7	City Driver

30	Vargas, Louis	06/25/66	SM7	City Driver
30	Walker, ↑ ↑ ↑ ↑ ↑ L.	11/12/69	NM7	City Driver
30	Wanza, Roosevelt	08/25/58	NM7	City Driver
30	Webb, Raymond H.	07/22/66	WM8	City Driver
30	Wesolick, Charles D.	03/02/69	WM7	City Driver
30	West, Owen D.	06/29/62	WM7	City Driver
30	White, Leroy	05/25/59	NM7	City Driver
30	White, Rochell	09/02/65	NM7	City Driver
30	Wilkerson, Harold	09/03/57	NM7	City Driver
30	Woodard, John	03/06/59	NM7	City Driver
30	Woodard, Dale L.	03/17/69	NM7	City Driver
30	Wright, Reuben	07/14/66	NM7	City Driver
30	Yates, John H.	04/16/56	WM7	City Driver
30	Young, Ellis	09/11/57	NM7	City Driver
30	Zipps, Albert R.	10/20/49	WM7	City Driver
30	Cardona, R. G.	07/13/67	SM8	City Driver
30	Davis, Jr., B. T.	09/23/68	NM8	City Driver
30	Johnson, E. L.	07/05/67	NM7	City Driver
30	McGregor, Jr., S.	10/14/68	NM8	City Driver
30	Broussard, Claude	06/23/52	NM7	Hostler (Spotter)
30	Cox, Lawrence E.	10/25/64	WM7	Hostler (Spotter)
30	O'Farrell, L. H.	09/11/55	WM7	Hostler (Spotter)
30	Gentry, Willie C.	01/08/49	NM8	Dockman

30	McVey, Lloyd F.	11/13/69	NM8	Dockman
30	Washington, Raymond L.	09/03/69	NM8	Dockman
30	Allison, Bert W.	08/27/50	WM6	A—Mechanic
30	Blake, Charlie	06/26/52	NM6	A—Mechanic
30	Coggeshall, Jr., George	09/09/49	WM6	A—Mechanic
30	Cordell, Lewis	11/01/51	WM6	A—Mechanic
30	Hargraves, D. W.	07/30/59	WM6	A—Mechanic
30	Hurt, Malford	05/11/48	WM6	A—Mechanic
30	Malone, Carney E.	07/23/52	WM6	A—Mechanic
30	Narendorf, M. W.	12/09/57	WM6	A—Mechanic
30	Tucker, E. B.	07/07/37	WM6	A—Mechanic
30	Johns, J. C.	01/26/59	WM7	Mechanic Helper
30	Guebara, C.	10/15/51	SM9	Porter
30	Lockett, Granvil	02/08/59	NM9	Porter
30	French, F. A.	09/26/53	WM1	Terminal Manager
30	Bearden, Homer R.	09/26/66	WM1	Dock Foreman/Supvr
30	Culp, Gordon R.	03/20/68	WM1	Dock Foreman/Supvr
30	MacGillis, R. J.	02/21/60	WM1	Dock Foreman/Supvr
30	Phillips, J. L.	12/20/65	WM1	Dock Foreman/Supvr
30	Callaghan, Joseph	09/01/68	WM4	Salesman
30	Owens, Jr., Ralph C.	08/27/70	WM4	Salesman
30	Prestridge, E. N.	08/30/65	WM4	Salesman
30	Rashall, Charles	07/15/68	WM4	Salesman

30	Weed, Evan R.	07/27/67	WM4	Salesman
30	McNatt, T. A.	10/10/55	WM1	Shop Superintendent
30	Putnam, James T.	02/22/57	WM1	Shop Foreman
30	Alexander, Johnnie	09/12/50	NM8	Serviceman
30	Augustine, J. P.	10/24/66	NM7	Serviceman
30	Burrell, Harold	02/13/67	NM7	Serviceman
30	Crigar, G. J.	02/01/51	NM8	Serviceman
30	Perridon, Jerry	03/12/68	NM7	Serviceman
30	Shepard, J. M.	09/04/66	NM7	Serviceman
30	Thompson, A. P.	02/06/61	WM1	Driver Supervisor
30	Garrett, Adolph L.	03/02/53	WM1	Operations Manager
30	Mason, Thomas P.	06/16/62	WM1	Terminal Sprdnt
30	Nichols, Charles	07/17/67	WM5	Collector-Inspector
30	McFarland, C. R.	01/19/59	WM5	Rate Clerk
30	Parsons, Ruth	07/08/43	WF5	Rate Clerk
30	Salinas, Paul	04/02/62	SM5	Rate Clerk
30	Blackstock, W.	09/16/68	WM1	Line Dispatcher
30	Lee, Roland E.	01/25/67	WM1	Line Dispatcher
30	Brown, Charlotte L.	01/07/70	WF5	Secretary
30	Fielder, Beryl	05/04/53	WF5	Secretary
30	Essery, Dannie G.	01/22/62	WM5	Lead Acct Clerk
30	Janda, Andrew J.	04/07/69	WM5	OSD Clerk
30	Mullen, Willis L.	04/01/68	WM5	OSD Clerk

30	Pesl, Joseph J.	10/02/67	SM5	OSD Clerk	
30	Smith, James E.	01/03/66	WM5	OSD Clerk	
30	Clark, Rose M.	01/31/69	WF5	Bill Clerk	
30	Heard, Ross S.	04/05/67	WM5	Bill Clerk	
30	Williamson, Joy L.	03/18/69	WF5	Bill Clerk	
30	Davidson, Selma D.	06/30/52	WF5	Accounting Clerk	
30	Gammon, Geneva H.	09/04/68	WF5	Accounting Clerk	
30	Harvey, William D.	11/17/58	WM5	Accounting Clerk	
30	Poorhan, R. C.	03/29/65	WM5	Accounting Clerk	
30	Rippy, Janet B.	05/31/67	WF5	Accounting Clerk	
30	Smith, Dennis D.	02/10/69	WM5	Accounting Clerk	
30	Winters, Dennis O.	02/19/68	WM5	Accounting Clerk	
30	Williams, Richard L.	06/06/71	NM9	Janitor	
30	Carte, Wanda M.	11/17/69	WF5	Tracing Clerk	
30	Keffer, Jack J.	04/13/59	WM5	Office Manager	
30	Rushing, John D.	10/08/68	WM1	Office Manager	
30	Garriet, Joseph	05/13/68	NM7	Mechanic	
				STATION TOTAL	287

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Longview, Texas
OCCUPATION CODE SEQUENCE

STA	NAME	HIRE DATE	EEO	TITLE
31	Adams, Jack F.	09/13/50	WM7	Line Driver
31	Baskin, Richard W.	06/27/69	WM7	Line Driver
31	Calhoun, Hoey	04/06/50	WM7	Line Driver
31	Chapman, Bobby	10/20/59	WM7	Line Driver
31	Chatham, J. H.	09/21/53	WM7	Line Driver
31	Colburn, B. R.	08/05/64	WM7	Line Driver
31	Craig, Samuel E.	12/20/48	WM7	Line Driver
31	Craig, Joe B.	05/08/54	WM7	Line Driver
31	Dickey, Leslie H.	05/20/57	WM7	Line Driver
31	Dugger, Mabry	02/25/51	WM7	Line Driver
31	Fitzgerald, James E.	02/12/69	WM7	Line Driver
31	Gentry, James O.	08/04/69	WM7	Line Driver
31	Gentry, Linas N.	10/17/49	WM7	Line Driver
31	Harris, Dewey D.	10/13/60	WM7	Line Driver
31	Haywood, Thomas	04/16/68	WM7	Line Driver
31	House, Billy	09/14/60	WM7	Line Driver
31	Johnson, James H.	12/13/46	WM7	Line Driver

31	Jones, William O.	05/13/63	WM7	Line Driver
31	Kelley, Louis E.	06/10/63	WM7	Line Driver
31	Knowles, Lee	07/05/61	WM7	Line Driver
31	Luman, Monroe A.	05/04/65	WM7	Line Driver
31	Luman, Robert H.	06/12/65	WM7	Line Driver
31	Parks, Walter A.	02/20/56	WM7	Line Driver
31	Potter, Roy A.	11/24/49	WM7	Line Driver
31	Reeves, Victor E.	06/24/63	WM7	Line Driver
31	Rogers, Emory L.	06/19/63	WM7	Line Driver
31	Rosewell, Vernon	09/04/63	WM7	Line Driver
31	Smith, J. P.	03/03/50	WM7	Line Driver
31	Taylor, Donald L.	08/12/65	WM7	Line Driver
31	Wilson, C. R.	03/10/52	WM7	Line Driver
31	Wlison, W. W.	03/18/54	WM7	Line Driver
31	Yarbrough, John	09/30/59	WM7	Line Driver
31	Broadwater, D. P.	03/21/66	WM8	Checker
31	Butler, Leonard E.	08/13/57	WM8	Checker
31	Coplin, Lloyd J.	05/16/60	WM8	Checker
31	Lambert, Roland B.	10/01/63	WM8	Checker
31	McLarty, Otis H.	08/06/51	WM8	Checker
31	Pope, Dor E.	07/24/67	WM8	Checker
31	Thornton, Larry C.	09/11/61	WM8	Checker
31	Weaver, Gene H.	09/16/59	WM8	Checker

31	Wofford, Reagan	06/04/61	WM8	Checker
31	Baker, William L.	01/02/64	WM7	City Driver
31	Blackstone, Willy	07/17/66	WM7	City Driver
31	Braswell, L. R.	09/07/65	WM7	City Driver
31	Cagle, Royal T.	04/11/52	WM7	City Driver
31	Calicutt, Robert E.	06/10/68	WM8	City Driver
31	Cox, Lowell D.	03/27/66	WM7	City Driver
31	Crews, Ira O.	05/06/48	WM7	City Driver
31	Dotie, Clyde	01/10/47	WM7	City Driver
31	Faggett, Jessie	09/08/46	NM7	City Driver
31	Ferguson, C. E.	08/07/66	WM7	City Driver
31	Ferguson, J. C.	10/25/65	WM7	City Driver
31	Grant, William K.	12/18/50	WM7	City Driver
31	Harty, Billy W.	05/16/66	WM7	City Driver
31	Lewis, Rollie D.	03/06/68	WM7	City Driver
31	McGraw, Alva L.	06/08/66	WM7	City Driver
31	Nugent, Chester	04/10/49	WM7	City Driver
31	Nugent, Forrest L.	05/15/55	WM7	City Driver
31	Parker, James G.	01/31/68	WM8	City Driver
31	Pool, Moody	04/28/52	WM7	City Driver
31	Reeves, Jr., O. F.	08/12/56	WM7	City Driver
31	Reid, Roddy R.	06/07/65	WM7	City Driver
31	Ross, Eston R.	04/07/66	WM7	City Driver

31	Silvertooth, J. W.	04/04/66	WM7	City Driver	
31	Stringer, D. M.	08/02/66	WM7	City Driver	
31	Thompson, C. W.	03/02/68	WM7	City Driver	
31	Thompson, R. H.	07/17/65	WM7	City Driver	
31	Walle., Rayford	03/15/53	WM7	City Driver	
31	Watson, Dee G.	06/03/63	WM7	City Driver	
31	King, Richard B.	02/18/69	WM7	Hostler (Spotter)	
31	Medlock, Billy S.	01/30/69	NM7	Hostler (Spotter)	
31	Hoffman, Lewis R.	10/01/56	WM1	Terminal Manager	
31	Rowland, Edwin L.	09/29/59	WM1	Dock Foreman/Supvr	
31	Spicer, Raymon L.	02/17/52	WM1	Dock Foreman/Supvr	
31	Thomas, Bobby G.	09/04/56	WM1	Dock Foreman/Supvr	
31	White, Donald H.	11/02/70	WM8	Dock Foreman/Supvr	
31	Belcher, Jube H.	07/08/68	WM4	Salesman	
31	Edney, Charles L.	07/10/62	WM5	Asst Terminal Mgr	
31	Ray, Harmon B.	02/16/48	WM1	Terminal Sprdnt	
31	Hall, William T.	12/26/45	WM5	Rate Clerk	
31	Roberts, Fred B.	09/11/55	WM1	Line Dispatcher	
31	Smith, Garry D.	04/04/66	WM1	Line Dispatcher	
31	Washburn, Jerreld	10/27/59	WM5	Line Dispatcher	
31	Ray, Bonnie	01/14/52	-WF5	Lead Acct Clerk	
31	Hestand, David M.	03/21/67	WM5	OSD Clerk	
31	Carter, Billy C.	09/19/68	WM5	Bill Clerk	

31	Gray, Robert	02/13/66	NM9	Janitor	
31	Johnston, Bobby J.	11/21/51	NM9	Janitor	
31	Spencer, Billy J.	10/21/63	WM5	Tracing Clerk	
				STATION TOTAL	90

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Lubbock, Texas
OCCUPATION CODE SEQUENCE

STA	NAME	HIRE DATE	EEO	TITLE	
32	Adams, Junior E.	10/13/58	WM7	City Driver	
32	Bohner, Riley E.	02/14/57	WM7	City Driver	
32	Copeland, Melvin L.	12/09/52	WM7	City Driver	
32	Holloway, Jerry R.	03/19/56	WM7	City Driver	
32	Mantooth, Louis M.	07/01/57	WM7	City Driver	
32	McMillan, Elwyn L.	09/31/57	WM7	City Driver	
32	Quinn, Travis D.	07/22/57	WM7	City Driver	
32	Bradley, Ronnie G.	11/11/69	WM7	City Driver	
32	Morris, William T.	10/18/71	WM1	Terminal Manager	
32	Blackwell, Grant C.	09/24/51	WM5	Rate Clerk	
32	Whitley, Louise D.	05/23/61	WF5	Lead Acct Clerk	
32	Hallenbeck, Sonya L.	08/13/59	WF5	Accounting Clerk	
				STATION TOTAL	12

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Lufkin, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
33	Allen, Bobby G.	01/13/69	WM7	City Driver
33	Baker, Jesse P.	03/22/65	WM7	City Driver
33	Crager, Jr., W. F.	10/07/68	WM7	City Driver
33	Dickerson, J. W.	02/27/51	WM7	City Driver
33	Hines, Kenneth D.	07/21/69	WM7	City Driver
33	Mosby, Harry L.	07/12/62	WM7	City Driver
33	Oliver, Norman G.	03/03/69	WM7	City Driver
33	Ratliff, Billy E.	09/18/67	WM7	City Driver
33	Rushing, O. E.	03/01/66	WM7	City Driver
33	Stanley, Jr., Leon	08/24/51	WM7	City Driver
33	Thomas, James W.	10/31/66	WM7	City Driver
33	Hill, Jerry W.	10/03/66	WM1	Terminal Manager
33	Powers, Max D.	11/23/59	WM1	Dock Foreman/Supvr
33	Williams, Bertha M.	10/01/71	WF5	General Clerk

STATION TOTAL 14

400

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Marshall, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
34	Copeland, J. C.	02/16/53	WM8	Checker
34	Cundiff, Sam R.	08/08/66	WM7	City Driver
34	Leath, Virgil	06/18/50	WM7	City Driver
34	Montgomery, A. H.	11/28/61	WM7	City Driver
34	Smith, Irving G.	02/24/69	WM7	City Driver
34	Strong, Earnest R.	06/13/50	WM7	City Driver
34	Strong, Joseph O.	06/08/50	WM7	City Driver
34	Weaver, Joe C.	04/04/66	WM7	City Driver
34	Burroughs, J. A.	02/24/66	WM5	Terminal Manager
34	Bogue, Wiley M.	11/02/59	WM1	Dock Foreman/Supvr
34	Henigan, Charles E.	11/01/71	WM5	Lead Acct Clerk

STATION TOTAL 11

401

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Oulssa, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
35	Morris, Julies A.	07/31/67	WM7	City Driver
35	Ballard, James R.	03/09/63	WM7	City Driver
35	Butler, Howell W.	10/01/49	WM7	City Driver
35	Settles, B. L.	03/09/52	WM7	City Driver
35	Adkins, James	02/10/55	WM7	City Driver
35	Barnett, Norman W.	10/18/47	WM7	City Driver
35	Fierro, Jr., Toribid	10/10/51	SM7	City Driver
35	Folmar, Howard M.	09/03/51	WM7	City Driver
35	Hewitt, Donald H.	01/21/57	WM7	City Driver
35	Jarrell, Alford A.	04/24/48	WM7	City Driver
35	King, William R.	02/15/56	WM7	City Driver
35	Schmid, Raymond	11/20/56	WM7	City Driver
35	Swanson, Bobby R.	06/09/59	WM7	City Driver
35	Cast, Arthur H.	11/1 3/48	WM7	City Driver
35	Sims, Clifford	10/12/68	WM7	City Driver
35	Geers, Otis D.	05/25/59	WM7	Local Driver

35	Gillam, A. H.	01/10/53	WM7	Local Driver	
35	Glasscock, Johnny B.	11/01/55	WM7	Local Driver	
35	Graham, Gary R.	11/14/66	WM7	Local Driver	
35	Virdell, Enoch	08/15/48	WM6	A—Mechanic	
35	Faulkner, Theo W.	11/06/65	WM1	Terminal Manager	
35	Bersosa, Jr., Elauterio	07/10/68	SM8	Serviceman	
35	Britt, Roy W.	02/15/54	WM5	Rate Clerk	
35	Lano, Jo A.	05/29/61	WF5	Lead Acct Clerk	
35	Cade, Nelda Y.	05/29/61	WF5	OSD Clerk	
35	Hoffman, Wanda A.	09/31/58	WF5	Accounting Clerk	
				STATION TOTAL	26

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Pecos, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
36	Davis, Robert L.	07/24/53	WM7	Line Driver
36	Griffith, Jimmy D.	08/06/71	WM7	Line Driver
36	Raby, Ray T.	08/26/52	WM7	Line Driver
36	Taylor, Jerry M.	07/26/71	WM7	Line Driver
36	White, James R.	10/23/71	WM7	Line Driver
36	Anderson, Ardon A.	01/26/47	WM7	Line Driver
36	Thompson, Jack E.	02/03/48	WM7	Line Driver
36	Cox, D. C.	08/01/50	WM7	Line Driver
36	Hodge, Willard V.	01/09/48	WM7	Line Driver
36	Johnson, Norman C.	10/18/46	WM7	Line Driver
36	Rice, David A.	03/28/51	WM7	Line Driver
36	Schuch, Chester	09/01/39	WM7	Line Driver
36	Smith, Fred R.	04/06/49	WM7	Line Driver
36	Thomasson, Willis A.	09/19/51	WM7	Line Driver
36	Robinson, Don R.	07/13/69	WM7	Line Driver
36	Anderson, Elmo C.	03/15/63	WM1	Line Dispatcher

STATION TOTAL 16

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: San Angelo, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
37	Haynie, Fred R.	02/07/66	WM7	Line Driver
37	Mayhew, William	09/02/59	WM7	Line Driver
37	Montgomery, Joe W.	07/13/71	WM7	Line Driver
37	Pounds, Jr., Julius C.	07/10/71	WM7	Line Driver
37	Vail, Hiram J.	07/09/71	WM7	Line Driver
37	Morgan, Everett L.	04/25/59	WM7	Line Driver
37	Alberts, Jr., John P.	11/04/44	WM7	Line Driver
37	Arhelger, Clifton W.	04/20/44	WM7	Line Driver
37	Blackstock, Milton C.	01/26/58	WM7	Line Driver
37	Seibert, John J.	08/04/64	WM7	Line Driver
37	Kelley, Ira D.	05/08/54	WM7	Line Driver
37	Maurer, William J.	11/13/47	WM7	Line Driver
37	Pearcy, John R.	01/16/46	WM7	Line Driver
37	Sommerville, Lester S.	01/11/51	WM7	Line Driver
37	Robison, George W.	08/18/50	WM7	Line Driver
37	Wright, Dorman I.	02/21/36	WM7	Line Driver
37	Shafer, Calvin B.	04/11/44	WM7	Line Driver

37	Hickey, William R.	05/27/66	WM7	Line Driver
37	Lewis, Loren W.	05/05/52	WM7	Checker
37	Candler, John L.	01/15/39	WM7	City Driver
37	Ellison, Bob	10/13/52	WM7	City Driver
37	Hakowsky, Daniel J.	10/27/52	WM7	City Driver
37	Chriesmon, T. J.	03/17/52	NM7	City Driver
37	Hodge, Boyd H.	08/13/48	WM7	City Driver
37	Johnson, Ben H.	01/07/52	WM7	City Driver
37	Smith, Roy W.	03/06/52	WM7	City Driver
37	Ashley, Roy V.	03/05/51	WM7	City Driver
37	Baze, Samuel R.	08/02/50	WM7	City Driver
37	Billings, E. Glynn G.	06/05/61	WM7	City Driver
37	Bumpas, Donald D.	04/18/66	WM7	City Driver
37	Burrell, James B.	03/01/43	WM7	City Driver
37	Henkhaus, Robert P.	12/14/66	WM7	City Driver
37	Loyd, Sr., George E.	10/31/50	WM7	City Driver
37	Michalik, Edmond A.	08/13/52	WM7	City Driver
37	Rowoldt, Herman E.	04/22/52	WM7	City Driver
37	Smith, Elder M.	07/06/64	WM7	City Driver
37	Upton, Weldon E.	02/18/52	WM7	City Driver
37	Jung, Clarence E.	01/15/50	WM7	City Driver
37	Schwartz, Hartwell W.	12/03/56	WM6	A—Mechanic
37	Tijerina, Rohelip	07/28/47	SM6	A—Mechanic

37	Hudson, Lonnie H.	11/29/66	WM1	Terminal Manager
37	Chaney, Jr., Farmer A.	05/01/69	WM1	Dock Foreman/Supvr
37	Houpt, Henry H.	07/24/61	WM1	Dock Foreman/Supvr
37	Mizell, Carl R.	09/08/70	WM4	Salesman
37	Metzger, Max J.	10/24/55	WM5	Rate Clerk
37	Kemp, Howard W.	04/07/69	WM1	Line Dispatcher
37	Pearson, Floyd J.	12/18/38	WM1	Line Dispatcher
37	Lichnovsky, Wilma R.	11/15/54	WF5	Lead Acct Clerk
37	Schreiber, Clarence A.	04/28/61	WM5	OSD Clerk
				STATION TOTAL 49

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: San Antonio, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
38	Becerra, Julian	11/21/49	SM8	Checker
38	Castillu, Rudy T.	10/27/58	SM8	Checker
38	Cruz, Richard T.	11/16/59	SM8	Checker
38	Flores, Manuel M.	01/04/51	SM8	Checker
38	Valenzuela, Jose	06/01/55	SM8	Checker
38	Alderete, H. A.	07/25/66	SM7	City Driver
38	Bilton, Ralph C.	10/16/61	NM7	City Driver
38	Brooks, J. L.	09/20/65	NM7	City Driver
38	Brunce, Jr., Freddie	02/03/49	NM7	City Driver
38	Castillo, Conrad C.	08/05/69	SM7	City Driver
38	Delarosa, Cecil A.	06/01/58	SM7	City Driver
38	Delgado, Albert	06/29/64	SM7	City Driver
38	Faribault, J. A.	05/30/66	WM7	City Driver
38	Gamez, Manuel G.	02/28/66	SM7	City Driver
38	Gandara, Jr., M. R.	10/02/50	SM7	City Driver
38	Garza, A. E.	07/11/66	SM7	City Driver
38	Gomez, Trinidad M.	03/05/52	SM7	City Driver

38	Gutierrez, D. G.	05/03/65	SM7	City Driver
38	Guzman, Roy S.	07/18/66	SM7	City Driver
38	Hernandez, A. C.	04/18/66	SM7	City Driver
38	Herrera, Modesto	05/03/65	SM7	City Driver
38	Hoffman, Curtis W.	04/20/64	WM7	City Driver
38	Holtz, August P.	06/06/49	WM7	City Driver
38	Hughes, Isaac	07/08/45	NM7	City Driver
38	Jackson, Clarence	01/05/45	NM7	City Driver
38	Juarez, Frank S.	10/27/58	SM7	City Driver
38	Korzekwa, Louis A.	07/03/42	WM7	City Driver
38	Lopez, Raymond	03/06/52	SM7	City Driver
38	Marcell, Frank G.	08/12/63	SM7	City Driver
38	McCall, Jr., William	04/13/64	NM7	City Driver
38	Mills, Jin	07/01/50	NM7	City Driver
38	Morales, G. R.	08/21/59	SM7	City Driver
38	Navarro, Joe	10/07/63	SM7	City Driver
38	Pena, B. H.	11/01/66	SM7	City Driver
38	Pena, Herman	11/27/67	SM7	City Driver
38	Quiroz, C. G.	06/20/66	SM7	City Driver
38	Quiroz, Frank	08/30/65	SM7	City Driver
38	Renteria, R. G.	08/22/66	SM7	City Driver
38	Rios, Richard R.	09/01/64	SM7	City Driver
38	Rodriguez, Jr., Ben	05/03/65	SM7	City Driver

38	Rodriguez, Jesus	09/21/€	SM7	City Driver
38	Saldana, Louis	11/21/6	SM7	City Driver
38	Sanchez, Matias	07/10/66	SM7	City Driver
38	Santos, Maximo P.	08/30/65	SM7	City Driver
38	Silva, Joe	10/02/67	SM7	City Driver
38	Stanush, Emil J.	03/15/49	WM7	City Driver
38	Torres, John N.	07/08/63	SM7	City Driver
38	Torres, Albert G.	04/21/69	SM7	City Driver
38	Villareal, J. R.	11/15/65	SM7	City Driver
38	! ! ! ! — COPY NOT CLEAR — ! ! ! !			City Driver
38	Walker, S. P.	02/05/68	NM8	City Driver
38	Washington, Frank E.	03/10/64	NM7	City Driver
38	White, Willie L.	08/30/65	NM7	City Driver
38	Burrell, Jr., Raymond	11/12/49	WM6	Lead Mechanic
38	Yastic, Robert L.	09/30/68	WM6	A—Mechanic
38	Hammonds, Billy G.	10/11/71	WM6	B—Mechanic
38	Asbury, Ed A.	05/01/61	IM1	Terminal Manager
38	Hayden, Jakes R.	10/06/60	WM1	Dock Foreman/Supvr
38	Westhoefer, Richard E.	03/15/71	WM1	Dock Foreman/Supvr
38	Beterle, E. A.	10/27/58	WM1	Asst Terminal Mgr
38	Lynch, James P.	02/28/55	WM5	Rate Clerk
38	Woodall, Stayton H.	05/18/50	WM5	Rate Clerk
38	Fuller, Dewey C.	10/01/47	WM5	Lead Acct Clerk

38	Dvorak, Don B.	06/13/54	WM5	OSD Clerk	
38	Williams, Georgene R.	05/23/55	WF5	OSD Clerk	
38	Reinders, William B.	03/08/71	WM5	Bill Clerk	
38	Earnest, Elizabeth	06/12/49	WF5	Accounting Clerk	
38	Rodriguez, Thomas	10/30/59	SM9	Janitor	
38	Truitt, R. E.	03/11/55	WM1	District Sales Mgr	
				STATION TOTAL	69

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Texarkana, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
39	Angel, Forrest G.	05/29/43	WM7	Line Driver
39	Meador, Charles D.	09/15/42	WM7	Line Driver
39	Orr, A. M.	02/02/48	WH7	Line Driver
39	Posey, Ralph	05/31/48	WM7	Line Driver
39	Roberts, C. E.	05/24/47	WM7	Line Driver
39	Latham, Warren	02/04/46	WM8	Checker
39	Bonner, Paul D.	09/24/68	WM7	City Driver
39	Bonner, James E.	06/28/67	WM7	City Driver
39	Herrington, Charles M.	10/22/69	WM8	City Driver
39	Jones, Jessie L.	07/31/69	WM7	City Driver
39	Latham, Hugh	06/20/66	WM7	City Driver
39	Latham, Joe M.	10/15/45	WM7	City Driver
39	Pierce, Charles R.	02/13/69	WM7	City Driver
39	Womack, J. E.	03/15/49	WM7	City Driver
39	Young, Billy F.	01/23/67	WM7	City Driver
39	Bradford, H. L.	08/25/48	WM7	Hostler (Spotter)

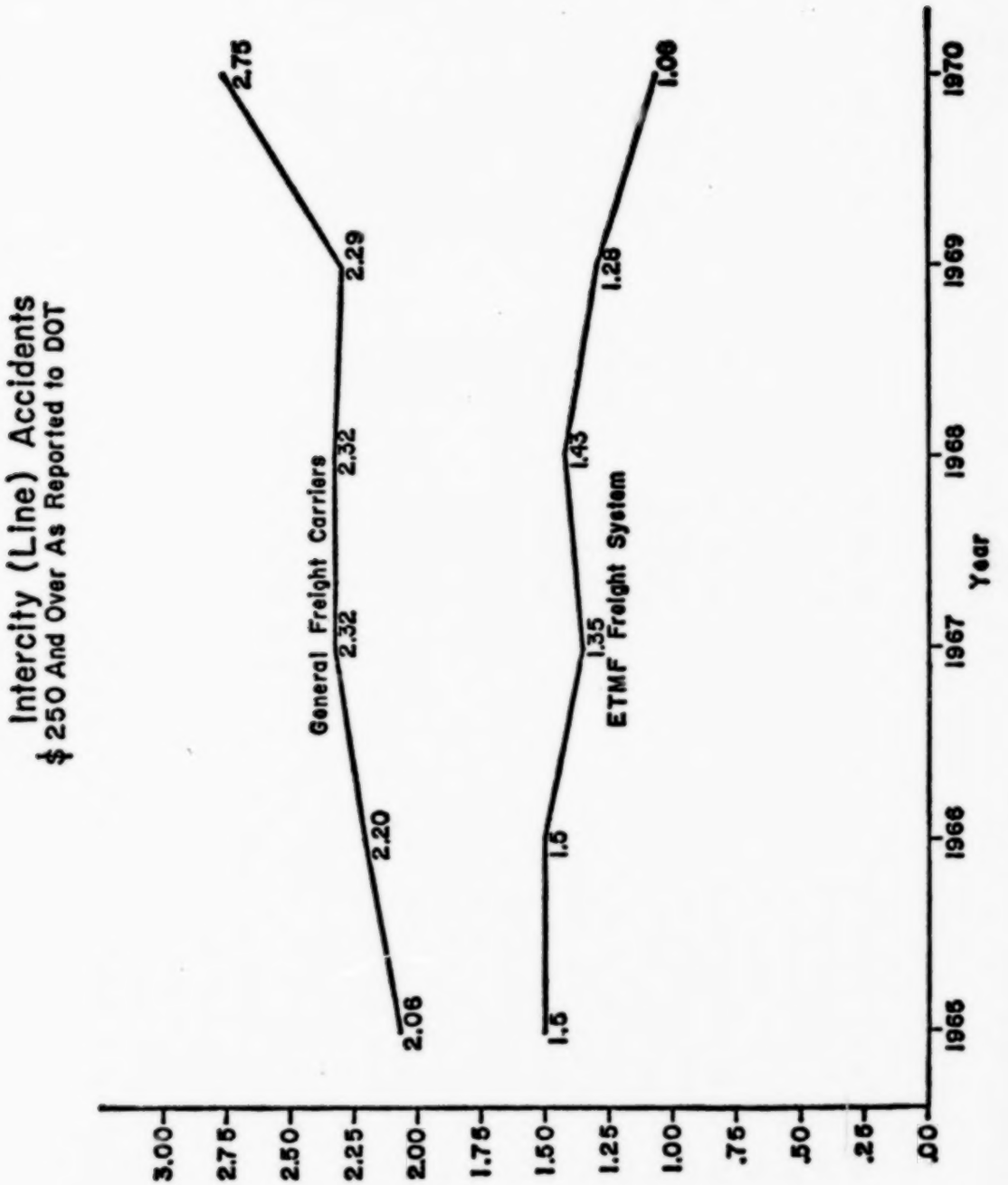
39	Bratton, Jesse D.	01/09/50	WM7	Hostler (Spotter)
39	Latham, Bennie	12/24/50	WM7	Hostler (Spotter)
39	Fullenwider, H. R.	05/05/48	WM6	Lead Mechanic
39	Hines, Charles D.	02/07/69	WM6	A—Mechanic
39	Myers, Walter N.	11/07/51	WM1	Terminal Manager
39	Huddleston, D. R.	01/10/46	WM1	Dock Foreman/Supvr
39	Riddle, T.	08/16/65	WM1	Dock Foreman/Supvr
39	Wyner, John C.	08/12/66	WM1	Dock Foreman/Supvr
39	Scott, Doris J.	04/14/65	WF5	Rate Clerk
39	Storey, Mary A.	03/05/52	WF5	Lead Acct Clerk
39	Roberts, George W.	08/31/70	WM5	General Clerk
				STATION TOTAL 27

ETMF FREIGHT SYSTEM
Compliance Review 35-5-26
Date: 02/29/72
Station: Tyler, Texas
Occupation Code Sequence

STA	NAME	HIRE DATE	EEO	TITLE
40	Foreman, D. W.	08/07/47	WM8	Checker
40	Box, Max R.	08/18/69	WM7	City Driver
40	Caldwell, Ronald L.	02/25/69	WM7	City Driver
40	Deville, Napoleon	10/04/65	WM7	City Driver
40	Edgar, James E.	08/06/53	WM7	City Driver
40	Elwood, Bonnie L.	07/03/67	WM7	City Driver
40	Hall, Jimmie T.	07/22/68	WM7	City Driver
40	Hartman, Danny R.	09/23/68	WM7	City Driver
40	Hayes, James E.	04/07/48	WM7	City Driver
40	Hayes, Loyd E.	09/28/59	WM7	City Driver
40	Jones, Bennie R.	10/03/55	WM7	City Driver
40	Kirkpatrick, L.	10/28/68	WM7	City Driver
40	Lee, Charles S.	12/01/69	WM7	City Driver
40	Lee, Robert E.	05/13/59	WM7	City Driver
40	Leifer, Mark H.	08/22/66	WM7	City Driver
40	Lusk, James H.	08/09/52	WM7	City Driver

40	McClenny, Virgil	09/06/66	WM7	City Driver
40	McGehee, J. E.	03/21/49	WM7	City Driver
40	Morphis, N. A.	03/28/50	WM7	City Driver
40	Sanders, J. T.	09/05/56	WM7	City Driver
40	Thompson, James F.	02/24/69	WM7	City Driver
40	Whitaker, Wayne C.	07/24/67	WM7	City Driver
40	Henry, Harold D.	08/24/59	WM1	Terminal Manager
40	Wright, Carl D.	03/30/62	WM1	Dock Foreman/Supvr
40	Pulley, Billy R.	02/01/62	WM1	Terminal Sprdnt
40	Gilbert, Evelyne	07/26/65	WF5	Rate Clerk
40	Berryhill, Dennis R.	02/04/69	WM5	OSD Clerk
				STATION TOTAL 27

DEFENDANT'S EXHIBIT AAAA



DEFENDANT'S EXHIBIT FFFF

73-2801

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION No. SA 71 CA 302

JESSE RODRIGUEZ, ET AL., *Plaintiffs*

VS.

EAST TEXAS MOTOR FREIGHT, ET AL., *Defendants*

Stipulation

All parties enter into the herein stipulation.

1. The Plaintiffs were employed at the San Antonio terminal of East Texas Motor Freight without regard to their race, color or national origin.

2. The no-transfer rule is uniformly applied without regard to race, color or national origin.

3. The standards and qualifications of East Texas Motor Freight for its road drivers are not discriminatory.

4. Except for one road driver employed by Valley Copperstate, who was transferred from San Antonio immediately after the merger with East Texas Motor Freight, East Texas has never had any road drivers domiciled in San Antonio.

5. That prior and subsequent to the effective date of Title VII of the 1964 Civil Rights Act to the date that Jesse Rodriguez filed a charge of discrimination with the Equal Employment Opportunity Commission, East Texas Motor Freight had never employed a Negro or Mexican-

American as a line driver in the State of Texas, covered by the Southern Conference Area Supplemental Agreement.

6. Except to being received and filed locally by then Terminal Manager Sager in August 1970, East Texas Motor Freight has never considered the written applications for employment as road drivers of the Plaintiffs and Trinidad Gomez. Such applications were transmitted to the Dallas corporate office of East Texas Motor Freight subsequent to the filing of the Equal Employment Opportunity Commission charges involved herein.

7. The claim of discrimination of the Plaintiffs is solely based upon the fact that after their original employment, they have been "locked in" to the lower paying job of city driver and denied a job as line driver because of:

(a) The maintenance of separate seniority rosters for city and line drivers;

(b) The fact that any city driver regardless of his race, if he transferred from city driver classification to a road driver classification, loses his accumulated city seniority;

(c) The Defendant East Texas Motor Freight discouraged inquiries from Plaintiffs concerning the qualifications and/or availability of line driving jobs;

(d) The fact that the Defendant East Texas Motor Freight had always employed Anglo/white applicants as road drivers;

(e) That the company's policy and practice of recruiting line or road drivers has been based to a great extent on a word of mouth system. Since the company's line drivers and supervisory terminal personnel are almost exclusively Anglo/white, such a

practice has continued the alleged illegal exclusion of Mexican-Americans and Negroes as road drivers;

8. That the only issue presently before the Court pertaining to the company is whether the failure of the Defendant East Texas Motor Freight to consider Plaintiffs' line driver applications constituted a violation of Title VII and 42 U.S.C. § 1981.

The foregoing stipulation is without prejudice to the right of any party to object to any of the facts stipulated herein on the ground of relevance or materiality.

DEFENDANT'S EXHIBIT L

RACIAL COMPOSITION OF COLLECTIVE BARGAINING UNIT
REPRESENTED BY LOCAL UNION 657
UNDER NATIONAL MASTER FREIGHT AGREEMENT
AND SUPPLEMENTS

January, 1965—January, 1972

	Anglos	Mexican-Americans	Negroes
1965	185	179	47
1966	188	184	52
1967	186	187	53
1968	186	195	47
1969	169	190	47
1970	165	195	48
1971	169	203	49
1972	178	218	38

DEFENDANT'S EXHIBIT M

RACIAL COMPOSITION OF TOTAL MEMBERSHIP OF
TEAMSTERS LOCAL UNION 657
SAN ANTONIO, TEXAS

January, 1965—January, 1972

	Anglos	Mexican-Americans	Negroes
1965	392	322	67
1966	432	490	120
1967	447	571	130
1968	438	746	105
1969	430	812	114
1970	426	697	115
1971	729	718	108
1972	543	639	103

DEFENDANT'S EXHIBIT N

RACIAL BREAKDOWN OF TRUCK DRIVERS WORKING FOR EAST TEXAS MOTOR FREIGHT WITHIN JURISDICTION AND MEMBERSHIP OF TEAMSTERS LOCAL 657

January, 1952 to January, 1972

CITY DRIVERS

	Anglos	Mexican-Americans	Negroes
1952	1	12	0
1953	1	10	0
1954	1	11	0
1955	1	10	1
1956	1	10	1
1957	4	21	0
1958	2	16	0
1959	5	16	0
1960	5	18	0
1961	3	19	0
1962	2	17	0
1963	2	18	0
1964	2	23	1
1965	2	22	1
1966	2	34	2
1967	1	35	4
1968	1	35	4
1969	3	35	4
1970	14	35	10
1971	15	29	11
1972	14	33	9

ROAD DRIVERS

1952-1969	None	None	None
1970	1	None	None
1971	None	None	None
1972	None	None	None

BEST COPY AVAILABLE

DEFENDANT EXHIBIT P

433

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

DOES GRANT THIS

Local Union Charter

To R. C. Shuler, N. E. Snell, W. O. Zander, Sabas Martinez, I. H. Garza, Louise Shuler, W. W. Law

and to their successors legally qualified to constitute Local Union No. 657 the work jurisdiction title of which is Teamsters, Chauffeurs, Warehousemen, Helpers and Food Processors

and the geographical jurisdiction of which is The counties of San Patricio, Karnes, Bexar, Travis, Nueces, Edwards, Medina, Uvalde, Hidalgo, and contiguous counties and also Kleberg and Lampasas Counties, Texas.

This Local Union shall be organized for the purpose of achieving the objects set forth in the International Constitution.

This Local Union shall be empowered to adopt Bylaws, negotiate contracts covering wages, hours, and conditions of employment in accordance with the laws, wages and requirements of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in accordance with the best interests of the labor movement.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America grants this charter with the understanding that should the parties receiving it, or their successors, fail to comply with the provisions herein set forth, or with the Constitution, laws, wages and requirements of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, this charter will be revoked and they shall be required to turn over all books, documents, property and funds to the General President or his representative, or to the General Secretary-Treasurer of the International Union, and should Local Union No. 657 neglect, forfeit its charter, or dissolve or be dissolved, or suspended, or forfeit its charter, then all books, documents, property and funds shall likewise be turned over to the General President, or his representative, or to the General Secretary-Treasurer in accordance with the applicable provisions of the International Constitution.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

hereby binds itself to support Local Union No. 657 in the exercise of its rights, privileges and prerogatives.

In Witness Whereof, We have subscribed our names and affixed the SEAL of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, this 12th day of July A. D., 19 65

Original Charter: 4/3/37
Revised Charter: 4/22/42

General President

General Secretary-Treasurer

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,

v.

EAST TEXAS MOTOR FREIGHT SYSTEM, and THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, *Defendants*.

CIVIL ACTION NO. 3-6025-B

JUDGE HUGHES

Consent Decree

Plaintiff United States of America filed its Complaint on June 29, 1972, alleging that defendants East Texas Motor Freight (hereinafter referred to as ETMF or the Company), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers were engaged in a pattern and practice of discrimination in employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, and Executive Order 11246, as amended. Defendant ETMF has denied said allegations. This Court has jurisdiction of the parties and of the subject matter in this action. This Decree, being issued with the consent of the defendant(s), shall not constitute an adjudication or finding on the merits of the case and shall in no manner be construed as an admission by defendants of any violation of said Title VII or of any similar Act or of said Executive Order 11246. This Decree shall be binding upon the parties hereto, and it is their intention to fully settle by this Decree all issues

raised by the Plaintiff in its complaint and occurring prior to the entry of this Decree.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT

General Provisions

1. Defendant ETMF and its officers, agents, employees, successors, and all persons in active concert or participation with them, are enjoined from engaging in any act or practice which has the purpose or effect of discriminating against any individual because of his race, color or national origin. Defendant ETMF shall hire, assign, promote, transfer and dismiss employees at its facilities without regard to race or national origin, and shall not discriminate against any individual at any of its locations because of such person's race or national origin.

2. Defendant ETMF shall designate a corporate official who shall be responsible for directing compliance with this Decree. ETMF shall provide Plaintiff with his or her name within 30 days of the date of entry of this Decree. If the Company subsequently changes its executive assignment, it shall promptly notify Plaintiff as to the new responsible Company official. In each terminal, the Terminal Manager (and the Regional Maintenance Supervisor, where appropriate) is the official responsible for completing the corporate officials' directions regarding compliance with this Decree.

Qualifications for Employment

3. The qualifications for city driving positions shall be those set forth in the Department of Transportation's Motor Carrier Safety Regulations, Title 49, Part 391, Sections 391.11 and 391.15. No black or Spanish-surnamed applicant for a city driving position who meets these qualifications shall be deemed insufficiently experienced for such a position if he has related experience driving equipment comparable to that to be operated on the job and has the appropriate state driver's license. In determining

equivalence, ETMF shall consider such factors as military driving experience and graduation from a truck driving school. The Company need not accept for equivalency purposes the fact of graduation from a particular truck driving school which is not dependable as a likely source of drivers who can meet the qualifications approved in this Decree. Nothing herein shall bar ETMF from rejecting the applicant for transfer or hiring to a city driving job because his driving record shows a pattern of risk or illegal operation, that the Company is required by law to avoid for prospective and incumbent employees under Title 49 Section 391, Subparts B and C of the Department of Transportation's Motor Carriers Safety Regulations. The parties understand that Plaintiff is entitled to develop, in the event of a contest under this clause, facts showing a relvant pattern of hiring standards inconsistent with the judgment of disqualification by the Company in the contested case.

4. ETMF may not reject a black or Spanish-surnamed applicant as unqualified for the position of dockmen, checker, or serviceman (or job titles expressing the same functions) merely because he has no prior experience in the position sought or in the trucking industry, so long as he has sufficient education or experience as to make it reasonably likely that he can perform the duties of the job.

5. Applicants for office and clerical positions may be required to pass objective, practical tests which measure the skills which they will need on the job sought. Practical tests are exemplified by typing, shorthand and office machine tests. ETMF may not reject a black or Spanish-surnamed clerical applicant as unqualified for entry level office and clerical positions merely because the applicant has no prior experience in the position sought or in the trucking industry, so long as such applicant has sufficient education or experience as to make it reasonably likely that such person can perform the duties of the job.

6. ETMF may set for over-the-road driving positions those qualifications as are contained in the Department of Transportation's Motor Carrier Safety Regulations (D.O.T.), Title 49, Part 391, (Sections 391.11, 391.15). ETMF may refuse employment to any applicant who is under 25 years of age or who does not meet ETMF's two-year driving experience requirement, or whose driving record shows a pattern of risk or illegal operation. Twelve months after the commencement of this Decree, the Company may increase those minimum qualifications again to 26 years of age and 2½ years of proximate prior road experience, if the Company is meeting the hiring goals set forth elsewhere in this Decree for increasing minority road drivers through transfer and recruitment; at 24 months after the commencement of this Decree, the Company may return its minimum requirements to 27 years of age and 3 years proximate prior road driving experience if it is meeting the hiring goals for road drivers contained in Paragraph 19 of this Decree. Nothing herein shall bar ETMF from rejecting an applicant for transfer or hiring to a road driving job because his driving record shows a pattern of risk or illegal operation, that the Company is required by law to avoid for prospective and incumbent employees under Title 49 Section 391, Subparts B and C of the D.O.T. Regulations. The parties understand that Plaintiff is entitled to develop, in the event of a contest under this clause, facts showing a relevant pattern of hiring standards inconsistent with the judgment of disqualification in the contested case. Minority applicants for over-the-road positions shall be deemed to meet ETMF's experience requirement if they have the equivalent of two years tractor-trailer experience. ETMF shall consider such factors as military driving experience, graduation from an accredited truck driving school, and city semi-trailer driving at highway speed experience and/or casual over-the-road experience when determining an applicant's comparable driving experience. The Company need not accept for equivalency purposes graduation from a particular

truck driving school which is not dependable as a likely source of drivers who can meet the qualifications set forth in this Decree.

7. ETMF may continue to give the Department of Transportation written safety test to all applicants; however, passing the test shall not be a qualification for employment unless the Department of Transportation revises its Motor Carrier Safety Regulations, Title 49, Part 391, to so provide.

High School Diploma and Intelligence Test

8. No black or Spanish-surnamed applicant shall be disqualified for employment solely because he has an arrest record or does not have a high school diploma or the equivalent, unless the job reasonably requires a high school diploma. The jobs of the Road Driver, City Driver, Dockman, Checker, Spotter, Mechanic, Partsman, Helper, Serviceman, and Janitor shall not be deemed reasonably to require a high school disploma. Applicants for the above jobs may be required, however, to be able to read and write sufficiently well to perform the duties of the job.

9. A high school diploma or the equivalent may be required for all executive, managerial, supervisory, technical, sales and clerical positions, except for working foremen in a mechanical shop or for dock foremen. Such factors as military experience or satisfactory prior employment which requires performance at the level of a high school diploma shall be factors considered in determining high school equivalency. In evaluating the qualifications for applicants for salesmen positions, ETMF shall give consideration to sales experience acquired in areas other than the trucking industry.

10. ETMF may not give any general intelligence or aptitude test to applicants that has not been validated in accordance with the provisions set forth in the Equal Employment Opportunity Commission's *Guidelines on Em-*

ployee Selection Procedures, 35 Fed. Reg. 12333, et seq.; 29 C.F.R. §§ 1607.1 to 1607.14. Before ETMF imposes more stringent qualifications than those listed in Paragraphs 3, 4, 5, 6 and 7 above, it shall give Plaintiff written notice of the intended changes and the reasons therefor at least forty-five (45) days before such qualifications are imposed.

Recruiting

11. ETMF shall undertake an employee recruiting program aimed at the black and Spanish communities in each city where ETMF maintains a terminal. Within forty-five (45) days of the date of entry of this Decree, ETMF shall contact organizations in the black and Spanish communities, such as the Urban League, the National Association for the Advancement of Colored People, and SER (Jobs for Progress, Inc.) etc., and shall also contact local job training organizations, and local truck driving schools as limited in Paragraphs 3 and 6 above, and inform each such organization and school of its employment standards and application process and of its desire to hire qualified black and Spanish employees, and that it will contact the organization or school for referrals whenever job vacancies occur or are reasonably anticipated. ETMF shall give each organization and school a statement setting forth the minimum qualifications for each job classification and a copy of the Company's equal employment opportunity statement described elsewhere in this Decree. Thereafter, whenever new employees are being hired for any job classification at an ETMF terminal, the terminal manager or his designee shall notify said community organizations and job training organizations immediately upon determining that job vacancies exist, and shall also notify such truck driving schools if new drivers are to be hired, in order to give said organizations and schools an opportunity to refer qualified black and Spanish-surnamed applicants. When ETMF needs additional employees, it shall give the applicable local union equal opportunity along with other

sources to provide suitable applicants if it has a referral hall, but ETMF shall not be required to hire those referred by the local union [unless mandated by applicable union contract]. The exception described in brackets is an issue to be decided by the Court.

12. ETMF shall not hire a white applicant for a vacancy in any job classification if such applicant's qualifications are less than the minimum qualifications for such job classification as provided to organizations and schools pursuant to Paragraph 11 above, unless such organizations and schools are first notified of the reduced minimum qualifications in time to give them a reasonable opportunity to refer applicants possessing the lesser qualifications.

13. If the organizations and schools notified pursuant to Paragraph 11 above fail to develop an adequate number of qualified black or Spanish-surnamed applicants for each job classification at a particular terminal, ETMF shall undertake an advertising program in newspapers directed to and having general circulation in the minority community. Radio communications are optional with the Company during the first year of this Decree; however, radio communications beamed to minority audiences shall be used thereafter if ETMF is not substantially meeting the hiring goals set forth herein.

14. ETMF shall recruit for its management and supervisory positions, in a manner which affords employment opportunities to black and Spanish-surnamed persons, including giving full and fair notice of opportunities to such sources as are likely to produce qualified black and Spanish-surnamed applicants for such positions. If the Company engages in college recruiting, it shall include colleges with substantial black and Spanish-surnamed student bodies among the colleges visited.

Hiring Procedures

15. ETMF shall accept applications from all black and Spanish-surnamed applicants who inquire about employment regardless of whether job vacancies exist. ETMF shall also accept applications for road driver positions at terminal locations where such locations have in the past been utilized as applicant sources for other ETMF terminal locations. The employee who accepts the application shall immediately review it for completeness and ask the applicant to provide any missing information. ETMF shall keep such applications in a current file for at least three months and shall give applicants adequate and timely notice of vacancies.

16. The responsible Company official shall review the application of each applicant to determine whether he meets the Company's minimum qualifications. Within 21 days of the date of the application, the official shall mail each black or Spanish-surnamed applicant a notice stating:

(a) That his application has been received and will be considered as vacancies occur. The application will be kept on file for three months and may be renewed in person or by letter. Nothing in this letter is intended to accord to the applicant seniority rights under the collective bargaining agreement.

(b) If on the face of the application the applicant does not meet the minimum basic standards for the position for which he is applying, the Company shall note the deficiency in its response to the applicant. The Company shall retain all copies of all correspondence for a period of 12 months.

The Affected Class

17. For the purposes of relief in this cause, the Affected Class shall consist of the following persons:

A. Such black or Spanish-surnamed city drivers, hostlers, checkers and garage employees who are domiciled

at a terminal where road drivers are presently domiciled or where road drivers have been, since July 2, 1965, domiciled under either ETMF or a predecessor company.

B. Such persons who are incumbent city employees employed at a non-road driving terminal who have, since July 2, 1965, indicated a desire to transfer to the road.

C. The black and Spanish-surnamed applicants for various positions at ETMF who are listed on Appendix C. This subclass may include additional such applicants as the parties may agree, or the Court may determine.

D. The persons who are listed on Appendix D.

Transfer Procedure

18. A. Within thirty (30) days after the seniority rights issue has been determined by a final Order of the Court herein, ETMF shall notify all Affected Class members set forth in Paragraph 17 A and B, informing those persons of whatever seniority relief is to be provided pursuant to the Court's Order. Thereafter, each Affected Class member set forth in Paragraph 17 A and B will be afforded thirty (30) days to indicate an interest in transferring to the road driver classification at the terminal in which he is employed (if that terminal has an over-the-road operation) or at a terminal within the job market, or to a terminal of his choice (if the terminal at which he is employed has no over-the-road operation) with the seniority rights provided by the Court Order.

Within thirty (30) days after expiration of the period for responding to the Company's notification, the Company shall determine whether those Affected Class members set forth in Paragraph 17 A and B are qualified for employment as road drivers pursuant to the terms of Paragraph 6 of this Decree.

An Affected Class member who transfers into a road driving position shall be subject to a thirty (30) day probationary period. During that time, ETMF may determine that the person is not qualified to drive or the person may decide that he does not wish to continue in the new position. In either event, he shall have the right to return to his former job without loss of seniority during said thirty (30) day period.

B. Within thirty (30) days after the entry of the Court's Order determining whatever seniority relief is to be granted to members of the Affected Class as set forth in Paragraph 17 C, the Company shall notify such members of the Court's Order and the opportunity for employment with ETMF at the terminal at which he applied or at a terminal within the job market of that terminal pursuant to the Court's Decree. Thereafter, each member of the subclass shall be afforded thirty (30) days to respond to the Company's notification and indicate an affirmative interest in employment with ETMF. Thereafter, the Company will within fifteen (15) days of the expiration of the period for indications of interest, transmit to such members of such subclass an application form, which form will be processed by the Company and a determination made regarding the applicant's qualifications for employment under the terms of said Order.

The Company shall notify the applicant of the disposition of his application within thirty (30) days of the Company's receipt of such application and in all cases where the applicant is not determined to be qualified for employment, the Company shall notify Plaintiff of the reasons therefor within seven (7) days of such determination by the Company. An Affected Class member who declines after seniority rights have been determined to fill a position offered in accordance with the terms of this subsection or who fails to report to work as initially scheduled, except for illness or other good cause, shall be considered for further employment solely as a new applicant. All disputes between parties concerning Affected Class members' quali-

fications for employment will be submitted to the Court for determination.

C. Affected Class members as identified in Paragraph 17 A, B and C who have indicated an interest in transferring to the road driving classification or have applied for a road or city position, shall be allowed a reasonable time if desired to become familiar, on the employee's non-working time, with ETMF equipment before taking any driving test.

D. Whenever a vacancy occurs at a terminal for which a qualified Affected Class member, as identified in Paragraph 17 A, B, or C has indicated interest under the Court's order, the Company shall offer employment (which offer shall remain open for not more than seven (7) calendar days) to such Affected Class member in order of such Affected Class member's seniority date, which date is to be determined by final Order of the Court. Plaintiff asserts, and ETMF will not oppose but leaves for determination by the Court, that the term "vacancy" as used herein refers to any position created or caused by ETMF at any location throughout its system: (1) by an increased need for employees; (2) by the recall of employees on layoff; or (3) through a change in ETMF's method of doing business.

E. An Affected Class member as identified in Paragraph 17 A, B, or C who declines after seniority rights have been determined to fill a position offered in accordance with the terms of this paragraph or who fails to report for work as initially scheduled, except for illness or other good cause, shall be considered for further employment solely as a new applicant.

F. Any person accepting relief under this paragraph waives all rights to monetary relief other than that which is provided in this decree.

Hiring Ratios and Goals

19. A. Road Drivers

Subject to the availability of qualified black or Spanish-surnamed applicants at the particular terminal where a vacancy occurs, ETMF shall adopt and seek to achieve a goal of hiring black and Spanish-surnamed persons who are qualified in accordance with this Decree for the road driver classification, at the rate of fifty persent (50%) of all hired in such classification until the percentage of black or Spanish-surnamed persons in the road driver classification at the said terminal is equal to the percentage of black or Spanish-surnamed persons in the adult workforce population of the city (or standard metropolitan statistical area (SMSA), if the city in which the terminal is located is in close proximity to or within an SMSA) where the terminal is located. The work force population percentages referred to within paragraph 19 shall be based on the "United States Bureau of the Census-Detailed Population Characteristics (Time Report PC (1-B))" for the 1970 Census unless ETMF or Plaintiff can show that any percentages contained therein are not substantially reflective of the relevant black or Spanish-surnamed work force figures for a given city. Plaintiff shall provide ETMF with a copy of said Report as soon as it becomes available.

B. City Positions

Subject to the availability of qualified black or Spanish-surnamed applicants at the particular terminal where a vacancy occurs, ETMF shall adopt and seek to achieve a goal of hiring black and Spanish-surnamed persons who are qualified in accordance with this Decree for the positions of City Driver, Dockman, Hostler or Checker at a rate of fifty percent (50%) of all hired city employees at the following terminals: Atlanta, Georgia; Birmingham, Alabama; Detroit, Michigan; Little Rock, Arkansas; Longview, Texas; Phoenix, Arizona; St. Louis, Missouri and Shreveport, Louisiana. At each such terminal, the above

rate of hiring shall continue until the percentage of black or Spanish-surnamed persons in city positions at that terminal is equal to the percentage of black or Spanish-surnamed persons in the adult work force population of the city or SMSA, if the city in which the terminal is located is in close proximity to or within an SMSA where the terminal is located.

C. Garage Positions

In those cities where garage positions taken as a whole are filled by minorities in a proportion less than one-half (½) of the 1970 Census minority percentage for adult workers, the Company agrees to the following affirmative action:

Subject to the availability of qualified black or Spanish-surnamed applicants at the particular terminal where a vacancy occurs, ETMF shall adopt and seek to achieve a goal of hiring black and Spanish-surnamed persons who are qualified in accordance with this Decree at the rate of twenty-five percent (25%) of all new hires until the percentage of minorities in garage positions taken as a whole in the particular terminal are equal to the 1970 Census minority percentage for adult workers. The parties understand that for the efficient operation of the business, it is necessary that an applicant for advanced garage positions possess the necessary skills to perform the duties of the then-existing vacancy.

D. Entry Level Administrative Positions

Subject to the availability of qualified black or Spanish-surnamed applicants at the time of a vacancy, the Company shall adopt and seek to achieve a goal of hiring black and Spanish-surnamed persons who are qualified in accordance with this Decree for entry-level administrative positions, on a terminal-by-terminal basis, at the rate of twenty percent (20%) of all such persons hired and promoted for those positions until the percentage of black or Spanish-surnamed persons in those positions, on a terminal-by-

terminal basis, is equal to the percentage of black or Spanish-surnamed persons in the adult workforce population of the city or SMSA, if the city in which the terminal is located is in close proximity to or within an SMSA where the terminal is located. As used herein, "Entry Level Administrative Positions" shall refer to dock foremen and to those positions which are normally filled by outside hiring not requiring any significant amount of prior experience.

E. Entry Level Clerical Positions

Subject to the availability of qualified black and Spanish-surnamed applicants at the time of a vacancy, ETMF shall adopt and seek to achieve a goal of hiring black and Spanish-surnamed persons who are qualified in accordance with this Decre for clerical positions on a terminal-by-terminal basis at the rate of twenty-five percent (25%) of all such persons hired or promoted for such positions until the percentage of black or Spanish-surnamed persons in those positions, on a terminal-by-terminal basis, is equal to the percentage of black or Spanish-surnamed persons in the adult work force population of the city (or SMSA if the city in which the terminal is located in close proximity to or within an SMSA) where the terminal is located.

20. ETMF shall use its best efforts to hire minority casual employees, if needed, but casual employees shall not be counted in determining the achievement of goals. Contract recall rights of employees on layoff shall not be adversely affected by this paragraph.

Preserving Records

21. ETMF will maintain records of all applications, hiring, initial job classifications, promotions, transfers between job classifications and dismissals. The Company will record the reasons for terminations of an employee or disqualification of an applicant and maintain that record for at least one year.

Financial Compensation to Affected Class Members

22. A. ETMF agrees to furnish the sum of $175,000 in full and final settlement as between the parties of its alleged obligation to provide back pay to Affected Class members as that class is described in Paragraph 17 herein. Any such person accepted a designated portion of said settlement shall sign a release stating that such designated portion is accepted in full and final settlement of all claims for monetary compensation, back pay or any other type of relief against ETMF or any predecessor corporation based upon any pending litigation or other alleged discriminatory actions because of race or national origin occurring prior to the date such release is signed. The signing of such release by an Affected Class member shall constitute a waiver of any rights as to monetary compensation, back pay or any other type of relief not otherwise specifically provided for herein against ETMF or any predecessor corporation which may have accrued to the Affected Class member, and also constitutes an agreement to be bound by a future decree entered herein as to any other relief of a non-monetary character.

B. There are attached hereto as Appendices A, B, C, and D, lists filed by Plaintiff with the Court, of all Affected Class members. Within thirty (30) days from entry of this Decree, Plaintiff will file with the Court and provide to ETMF the designated portion(s) of said monetary settlement as has been provided in Paragraph A above, which shall be offered to each Affected Class member on said lists. Said lists shall become a part of this Decree as if fully incorporated herein. In addition to the challenges to subclass participation allowed by Paragraphs 17 and 18, the Company may challenge the propriety of the individual amount designated for any subclass member to avoid extreme relative inequity or irrational allocation. Such challenge must be filed with Plaintiff within fifteen (15) days of receiving lists required above in this paragraph. There will be no less than fifteen (15) days for

discussion between the parties. Unresolved disputes are to be submitted to the Court for resolution. In the event of a dispute over relative amounts of back pay under this paragraph, the Company shall have the burden of persuasion by clear and convincing evidence.

Following final agreement between the parties, or pursuant to an Order of the Court in the event of a dispute hereunder, on the designated amount for each subclass member, ETMF shall provide Plaintiff with a group of certified checks payable to the class members respectively. The form of that check shall incorporate by reference the release and waiver provisions of this Decree.

In the event that an Affected Class member does not accept the designated portion of said settlement, it shall be returned to ETMF. In the event that any Affected Class member does not sign a release within ninety (90) days of Plaintiff's notice to Affected Class members, which notice shall be sent within thirty (30) days of entry of this Decree, that class member shall forfeit and forever forego any monetary relief provided pursuant to this Decree, but shall retain his individual rights.

C. Each party to this Decree is to pay its own costs of litigation, and the Department of Justice shall pay the court costs incurred to the date of entry of this Decree.

Reporting

23. Within forty-five (45) days after entry of the Decree, Defendant ETMF shall serve upon Plaintiff a report stating the total number of employees by classification, race or national origin, and date of hire for each terminal and corporate office as of that date. Within thirty (30) days after the end of each succeeding four-month period, and until such time as this Decree is dissolved, Defendant ETMF shall serve upon Plaintiff a report for each terminal and the general office showing by job classification and race:

A. The total number of employees at the end of the period.

B. The number of persons by race or national origin and the number of persons by race or national origin terminated during the period.

C. The number of applicants by race or national origin for employment who were not hired during the period, and the number of applications by race or national origin pending at the end of the period.

D. For members of the Affected Class, a report showing (1) whether he transferred to another job classification during the period; (2) whether he qualified for the new position, was disqualified and a brief description of the reason for the disqualification, or why he decided to return to his former classification, if the Company knows; (3) his status at the end of the period.

E. All notices and reports required by this Decree shall be mailed to the Chief, Employment Section, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530, unless notified otherwise by counsel for Plaintiff.

Court Supervision

24. During the pendency of this Decree, ETMF shall be subject to the jurisdiction of this Court or its designee for the purpose of determining its compliance herewith and with Executive Order 11246 with respect to the subjects covered by this Decree, and shall not be required to submit reports with the United States Postal Service as required by Executive Order 11246 and the Regulations thereunder.

Posting

25. ETMF shall post a copy of this Decree, together with a statement of the Company's equal employment opportunity policy, on all employee bulletin boards at each of its terminals. The statement shall include a summary of the rights of members of the Affected Class.

Opportunity for Adjustment of Deficiencies

26. Plaintiff will give ETMF thirty (30) days' notice and opportunity to investigate and correct or refute any alleged violation of this Decree which comes to the attention of the Department of Justice, before applying to the Court for a Court Order on account of any such alleged violation.

Non-Reprisal Pledge

27. Defendants shall not discriminate or retaliate in any manner against any employee or applicant who has furnished information or participated in any respect in the investigation of the defendants' employment practices in connection with this action or any other Title VII proceeding.

Duration

28. The Court retains jurisdiction of this action for such further relief or other orders as may be appropriate. At any time after four (4) years subsequent to the date of entry of this Decree, the defendants, or any of them, may move this Court, on due notice, for dissolution of this Decree upon a proper showing.

ENTERED at Dallas, Texas, this —— day of January 1974.

United States District Judge

BY CONSENT:

For Plaintiff United States of America:

/s/ SQUIRE PADGETT
DAVID L. ROSE
SQUIRE PADGETT
JOHN M. GADZICHOWSKI
Attorneys
Department of Justice
Washington, D.C. 20530

For Defendant East Texas Motor Freight, Inc:

/s/ GEORGE E. SEAY
George E. Seay, Esquire

/s/ WILLIAM C. STROCK
William C. Strock, Esquire
SEAY, GWINN, CRAWFORD & MEBUS
Dallas Federal Savings Building
Dallas, Texas 75201

/s/ RICHARD C. HOTVEDT
Richard C. Hotvedt, Esquire

/s/ HARRY A. RISSETTO
Harry A. Rissetto, Esquire
MORGAN, LEWIS & BOCKIUS
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

/s/ ROBERT H. MAIER
Robert H. Maier
Vice President, Training & Personnel
East Texas Motor Freight System
2355 Stemmons Freeway
Dallas, Texas 75207

For Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America:

L. N. D. WELLS, Esquire
MULLINAX, WELLS, MAUZY & BAAB, INC.
8204 Elmbrook Drive, Suite 200
Dallas, Texas 75247

For Defendant International Association of Machinists and Aerospace Workers:

RELEASE

For and in consideration of the sum of $———— to be paid me this date by East Texas Motor Freight (hereinafter referred to as ETMF) upon the execution of this Release, in accordance with the provisions of the Consent Decree Entered in Partial Resolution and any subsequent Court Order in the suit styled "United States v. East Texas Motor Freight, et al., Civil Action No. 3-6025-B, in the Northern District of Texas," I, ————————, hereby release and discharge ETMF and/or any predecessor company from all liability for injunctive or any other affirmative relief, back pay, or other monetary relief arising out of alleged discriminatory employment practices, occurring prior to the date of this Release. I also agree to be bound by any further Decree, arising from this cause, entered by the Court with respect to other relief of a non-monetary character, and I agree to discontinue any pending legal action(s) which I may have against ETMF or any predecessor company involving any alleged discrimination based upon race or national origin occurring prior to the date of the execution of this Release.

I have read, had explained, and understand my rights under this Decree. I understand that in executing this Release, I voluntarily agree to be bound by the terms and waivers contained in said Consent Decree.

Signed this —— day of ————, 1974.

————————————

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

CIVIL ACTION No. CA-3-6025-B

Stipulations

For the purpose of permitting this Court to consider and enter an Order on the issue of whether the incumbent black and Spanish-surnamed Affected Class applicants and employees are entitled to seniority relief, and solely for such stated purposes, plaintiff United States and defendant East Texas Motor Freight, Inc. (hereinafter referred to as ETMF), hereby agree, stipulate, and represent to the Court that the following facts are true and accurate and may be entered as such by this Court:

1. This action was brought on June 29, 1972, by the Attorney General on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the contractual obligations imposed by Executive Order 11246, as amended, 30 F.R. 12319.

2. Defendant ETMF is incorporated under the laws of the State of Texas and does business in this District. ETMF is a common motor freight carrier engaged in the business of transporting commercial freight, including materials for the United States under government bills of lading, and maintains terminal operations in approximately nineteen (19) states.

3. As of September 8, 1972, ETMF employed approximately 3814 persons system-wide, of whom approximately 317 were black and 224 were Spanish-surnamed. As of said date, the distribution of ETMF's work force by race and national origin and by selected job category was as follows:

Job Category	*Total*	*Black*	*Spanish-surnamed*
Clerical	455	2	10
Dock Forman/Line Dispatcher	165	0	0
Salesman	67	0	0
Line Driver	797	7	8
City	1,853	271	186
Janitor	19	10	4
Shop			
Shop Supt./Foreman	37	0	0
Mechanic	169	11	6
Mechanic's Helper	9	2	0
Garageman	70	14	6

4. On June, 1972, the date plaintiff's complaint was filed, ETMF employed no black line drivers. The first black road driver employed by ETMF was a Roseveldt Mayes, in Chicago, Illinois, on July 20, 1972.

5. As of the date the complaint was filed, ETMF employed eight (8) Spanish-surnamed line drivers. Of the eight Spanish-surnamed line drivers, five (5) had been employed as line drivers by Valley Copperstate Systems (VCS) and pursuant to ETMF's acquisition of VCS were employed by ETMF in 1970. The seniority dates of the three remaining Spanish-surnamed line drivers reflect that the most senior was employed by ETMF on May 15, 1971.

6. ETMF currently employs road drivers at the following terminals:

Atlanta, Georgia
Aurora, Illinois
Birmingham, Alabama
Chicago, Illinois
Corning, California
Dallas, Texas
Decatur, Illinois
Detroit, Michigan
Memphis, Tennessee
Moline, Illinois
Neelyville, Missouri
Oakland, California
Pecos, Texas
Phoenix, Arizona
Portland, Oregon
Rockford, Illinois

El Paso, Texas	San Angelo, Texas
Grand Rapids, Michigan	South Bend, Indiana
Jackson, Mississippi	St. Louis, Missouri
Los Angeles, California	Texarkana, Texas
Longview, Texas	Toledo, Ohio

7. All ETMF personnel employed as road drivers, city drivers and dockmen or checkers are represented for the purpose of collective bargaining by local unions affiliated with the International Brotherhood of Teamsters (hereinafter referred to as the Teamsters). ETMF has signed collective bargaining agreements with each such local union of the Teamsters.

8. All ETMF personnel employed as garagemen and mechanics are represented for the purpose of collective bargaining by local unions affiliated with the Teamsters or with the International Association of Machinists and Aerospace Workers (hereinafter referred to as the Machinists). ETMF has signed collective bargaining agreements with each such local of the Teamsters and of the Machinists.

9. Trucking Employers, Inc. is the organization which represents associations of motor carriers, including those to which ETMF belongs, for collective bargaining purposes with the negotiating committees of the Teamsters.

10. Under the current labor agreements that ETMF has with the Teamsters and the Machinists, employees may not carry over their accrued company seniority from city, garage or mechanic positions to road driver positions, or vice-versa.

11. In approximately 1954, ETMF devised and implemented a corporate policy prohibiting employees in city, garage and mechanic classifications from transferring to road driver positions, and vice-versa. This policy, which ETMF commonly refers to as the "no transfer rule," has remained in effect to this date, except that during February 1972, ETMF temporarily suspended the no transfer rule for approximately a thirty (30) day period in order to permit employees classified as city drivers, dockmen or checkers to transfer to road driver positions, or vice-versa, at those company terminals where road drivers were domiciled located within the Southern Conference Area under the National Master Freight Agreement with the Teamsters.

12. In February 1972, or shortly thereafter, if such an employee as referred to in paragraph 11 above was granted permission by the Company to transfer to or from a road driver position, he lost all of his accrued seniority for all purposes except fringe benefits (such as vacation length) and went to the bottom of the seniority list in his new position.

13. Prior to the date of entry of the Cosent Decree in Partial Resolution of this suit, a number of black and Spanish-surnamed applicants and incumbent ETMF employees have sought road driver and other positions unsuccessfully; under the Consent Decree entered herein, these black and Spanish-surnamed applicants and incumbent ETMF employees, as referred to in Paragraph 17 of the Consent Decree, if qualified, will be offered those positions at ETMF.

14. The Affected Class consists of those persons referred to in Paragraph 17 of the Consent Decree entered in Partial Resolution of this suit.

15. ETMF will not introduce evidence herein showing that business necessity requires denying incumbent Affected Class members the right to transfer to road driving or other positions and to carry over their seniority to such positions, for all purposes.

16. The above stipulations are conditioned upon the entry by the Court of the Consent Decree referred to herein.

Respectfully submitted,

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/s/ SQUIRE PADGETT
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Washington, D.C. 20530

Counsel for Plaintiff United States of America

[29 U.S.C. § 158(b)(3)]

(b) It shall be an unfair labor practice for a labor organization of its agents—

• • • • • • • • • •

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

[29 U.S.C. § 159(a)]

Representatives and elections—Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the em-

ployees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

[42 U.S.C. § 1981]

Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

[Title VII(a) § 703(a)-(j)]

Unlawful employment practices—Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

EMPLOYMENT AGENCY PRACTICES

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

LABOR ORGANIZATION PRACTICES

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail to refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

TRAINING PROGRAMS

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

BUSINESSES OR ENTERPRISES WITH PERSONNEL QUALIFIED ON BASIS OF RELIGION, SEX, OR NATIONAL ORIGIN; EDUCATIONAL INSTITUTIONS WITH PERSONNEL OF PARTICULAR RELIGION

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

MEMBERS OF COMMUNIST PARTY OR COMMUNIST-ACTION OR COMMUNIST-FRONT ORGANIZATIONS

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

NATIONAL SECURITY

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

SENIORITY OR MERIT SYSTEM; QUANTITY OR QUALITY OF PRODUCTION; ABILITY TESTS; COMPENSATION BASED ON SEX AND AUTHORIZED BY MINIMUM WAGE PROVISIONS

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of sections 206(d) of Title 29.

BUSINESS OR ENTERPRISES EXTENDING PREFERENTIAL TREATMENT TO INDIANS

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

PREFERENTIAL TREATMENT NOT TO BE GRANTED ON ACCOUNT OF EXISTING NUMBER OR PERCENTAGE IMBALANCE

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any

individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109.